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RESEARCH ARTICLE

THE CIVIL RIGHTS FOR CHILDREN IN THE POLICE INVESTIGATION OF INDONESIA.

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Abstract

Children are human beings who must be protected their civil rights. In the context of humanity, children are the future of a nation's civilization. In Indonesia, a child who is under police investigation, because it is accused of a crime, it must also be protected its civil rights as part of upholding human rights. The children protection law in Indonesia, namely the Act of Number 35 of 2014 on Children Protection, has become the main legal basis in Indonesia regarding the protection of civil rights for children. A child according to this law must not neglect its civil rights, even though the child is undergoing a police investigation process for being involved in a crime. This article, tries to do an analysis of that with the normative legal approach method.

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Introduction:-

Indonesia is a legal state based on Pancasila and the 1945 Constitution, which has a commitment to guarantee human rights and place the position of each person before the law and government without exception. Article 27 of the 1945 Constitution Paragraph (1), expressly regulates the provision, as follows: All citizens are at the same time in law and government and are obliged to uphold the law and government no exception. This provision is a constitutional basis for the Indonesian state to guarantee equality of law for all citizens regardless of social status, economic condition, and gender. Legal equality for every citizen, in the context of legal competence must be proportionally stated, especially, it is related with the adult¹.

The phenomenon of crime in Indonesia since the millennium era, the advancement of information and technology, it has involved children both as perpetrators of crime and who have become victim of crime. In the context of children involved in crime, it will face the police when a child is convicted of a crime. The police will conduct an investigation on a child suspected of being involved in a crime. When a child in a crime is questioned by the police, it should not be treated the same as an adult involved in a crime.

Act of No. 11 of 2012 on the Juvenile Justice System which places the examination of children as perpetrators of crime, does not place children as parties who are punished but as parties who must obtain moral guidance. However, the position of the child is an asset of the future of the Indonesian people.

Likewise, Law Number 35 of 2014, in Indonesia regulates legal protection for children as perpetrators of crime. Legal protection according to the provisions of the law, that a child must get legal protection in the form of fulfilling

¹ Wurianalya Maria Novenanty, "Between Human Rights And Justice Principle In Children's Civil Rights", *Journal of Melintas*, 2016 Edition, Faculty of Law Parahyangan Catholic University Bandung, Indonesia, p. 132-147

their civil rights. Civil rights are inherent rights to a person. Civil rights are individual rights inherent to someone naturally. These civil rights are also guaranteed by the Indonesian constitution, namely in the 1945 Constitution.

The protection of civil rights for children in perpetrator of crime who are under police investigation according to the Indonesian legal system, it has generally been regulated by the Indonesian Constitution, namely the 1945 Constitution. Also specifically regulated in Act of 11 of 2012 on the Juvenile Justice System and Act of Number of 35 of 2014 on Children Protection. The children protection law in Indonesia, it has stated explicitly about the treatment of children who are under police investigation, should be treated as human beings who are in state coaching, not treated as prisoners like adults. The treatment of these children includes protection of their civil rights which should not be ignored by the police while conducting investigation.

This article is a result of normative legal research, which analyzes aspects of fulfilling civil rights for children of criminal who are under police investigation according to the Indonesia legal system. This article is expected to provide academic benefits for anyone who will conduct research on legal protection for children offenders according to the Indonesia criminal justice system.

Method of Research:-

This article is the result of legal research conducted by the author to examine the phenomenon of crime committed by children in Indonesia. The social phenomenon of children crime in Indonesia, are only the empirical basis for the author to build argumentation on how to protect civil rights for children in offender. This article, especially to do analysis in legal, it is not to empirical social analysis. However, the analysis of this article is normative legal analysis, as part of the normative legal research method². Normative legal research method is one of the research methods to describe prescriptive legal characteristic. This method uses the analytical approach. Use for the instrument of children protection legislation in Indonesia, especially Act of No. 35 of 2014. The use of this law, is the main foundation for author to build legal arguments on the protection of rights civil for children in offender who are in the process of police investigation.

Discussion:-

Definition of Children According to the Indonesian Legal System

Judging from a juridical-normative perspective, the definition of a child according to Indonesian positive law is defined as someone who has not entered adulthood (minderjaring or person under age), or minderjaringheid or inferiority. It is also referred to as children under the supervision of a guardian (minderjarigeid onvervoodij).

Some regulatory products in Indonesia also vary in determining the age limit for a person to be categorized as a child. According to Act of Number 11 of 2012 on the Children Criminal Justice System in Article 1 formulates a definition of children, is that children are someone who has not reached the age of 18 old years. In contrast to the provision in Act of Number 4 of 1979 on Children Welfare that is meant for children as contained in Article 1, is: "A person who has not reached the age of 21 old years and has not married". The enactment of Act of Number of 23 of 2002 on Children Protection (hereinafter referred to as the Children Protection Law) also provides an understanding of children in different, as stated in Article 1 number 1 as follows: "Child is someone who is not 18 years old, including child who is still in the womb"³.

In Article 330 of the Indonesian Civil Code that: "Not yet mature are those who have not reached the age of even twenty-one and have not married before. If the marriage is dissolved before they are even twenty-one years old, then they do not return to the position of adulthood, those who are immature and not under the authority of the parents, are under guardianship on the basis and manner as regulated by this law. "

Determination of the age limit of children according to Indonesian law, can also be found in 47 article (1) and article 50 paragraph (1) of Law Number 1 Year 1974 on the Marriage that what is called a child is someone who has not reached the age of 18 years and has never held marriage. The notion of children was also expressed by several Indonesian criminal law experts, who became legal doctrines in Indonesia, including Professor Romli Atmasasmita, that understanding of children: "As long as the body goes through the process of growth and development, the person is still a child and becomes an adult when the development process and the growth is complete, so the age

² Tom R. Tyler, "Methodology in Legal Research", *UtrechtLawReview*, Volume 13 Issue 3, 2017, p. 134.

³ Joko Prakoso, *The Existence for Justisiabel the Indonesia Criminal Procedure Code*, Ghalia Indonesia, Jakarta, 1986, p. 3.

limit, children are the same as the beginning of adulthood, which is 18 years for women and 20 years for men, as in America, Yugoslavia and other western countries "

Those are some conceptual exposures about the age category of a person who can be called a child according to the legal system of Indonesia and according to the doctrine of Indonesia criminal law experts. The description of the category of children who violate the law and children in conflict with the law. According to Article 1 of Law Number 11 of 2012 concerning the Criminal Justice System of Children, it is formulated that what is meant by children who violate the law are children in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts, while children in conflict with the law according to this law, is a child who is 12 years old but not yet 18 years old who is suspected of performance in criminal act.

The Phenomenon of Children in Indonesia in the Circle of Crime

Based on the report of the Commission for Children Protection of Indonesia that children in Indonesia who are trapped in a circle of crime both as perpetrators and those who have become victims, have increased every year. the Commission For Children Protection of Indonesia has reported that from 2011 to 2018, cases of children as perpetrators of sexual crime have topped the list. This Also followed by crimes involving children as perpetrators, namely physical violence and even perpetrators of murder. This phenomenon has raised concern for children psychologists in Indonesia.

In the following section, the author presents data on criminal cases involving children in Indonesia, both as perpetrators and those who are victims of crime.

Table 1:-Indonesian Children in the Circle of Crime, 2015-2017

Kasus	2015		2016		2017	
	The Executant	Victim	The Executant	Victim	The Executant	Victim
Physical Violence (persecution, beatings, fights, etc.)	81	197	108	146	112	173
Psychic Violence (threats, intimidation, etc.)	22	58	39	64	41	62
Murder	36	59	48	72	51	64
Sexual Violence (rape, molestation, sodomy/pedophilia)	157	218	146	192	168	188
Theft	81	34	43	56	57	55
Traffic violations	52	74	71	94	76	93
Illegal Weapon Ownership	48	23	28	23	52	23
Kidnapping	6	16	8	36	8	34
Abortion	19	16	48	64	53	58
Terrorism	0	15	0	16	4	17
Total	502	710	539	763	622	767

The Report of the Commission for Children Protection of Indonesia

Table 2:-Indonesian Children in the Circle of Crime, May 2018

No	The Name of Cases	Total
1	Domestic violence	324
2	Sexual Crime, Pornographic, and Cybercrime	255
3	Narcotic Abuse and Illegal Drug	162
4	School violence and school violation	161
5	Trafficking and Sexual Exploitation	144
6	Social Riots	119

7	Crime Against Religion and Culture	105
8	Crimes against Children's Civil Rights	79
9	Children Not To Get Proper Protection	32
Total		1381

The Report of the Commission for Children Protection of Indonesia

The rise of crimes involving children both as perpetrators and those who have been victims of crime in Indonesia, According to Irma Gustiana's opinion, psychologist, that many Indonesian children are trapped in a cycle of crime, the main cause is lack of love from their families so they look for psychological satisfaction outside. In addition, Irma also explained that the social environment also affects children's behavior. A child can be a criminal to get recognition from its peers⁴.

"A lot of bad activities are aired, for example, through social media and the internet, so children unconsciously consider their behavior to be normal," said Irma. Mulia Astuti's research for the Ministry of Social Affairs, describes the causes of child crime more systematically, among others, opportunity factors, environmental factors, and economic factors. In this study, Astuti examined six families whose children were involved in crime. The result, five of six children, lacked attention and affection in the family.

"For example, parents who do not teach religious values and norms, lack of rules and affection in the family, or often give bad examples, children will do crimes (robbery, theft, murder, destruction, rape, etc.). Astuti wrote in her report. However, Astuti also found the case of a child in a crime who receives insufficient attention of the family. In that case, a child carries out criminal acts because of economic pressure and poor communication patterns with his social environment.

The Civil Rights For Children In The Process of Police Investigation In Indonesia

The Police as law enforcement officer of Indonesia, has a normative juridical authority to conduct investigation into alleged crime. Basically, there are two terms commonly used in examining the alleged occurrence of a criminal act by the police, namely "the act of investigation" and "the act of examination of evidence of crime".

Both terms are used differently both in theoretical and practical terms. Referring to the Article 1 of the Indonesia Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana Indonesia), the term of "the investigation" can be formulated as follows: "Investigation is a series of investigative action to find an evidence that is suspected of being a criminal offense, and to determine whether or not an investigation can be carried out in a way that is stipulated in this code ". In the practice of inquiry in Indonesia, the term "investigation" often uses the term "detective", which means a series of tasks carried out by police investigator whose main task is to receive report and to regulate and to stop someone suspected of committing a crime. That is, investigation is an action that precedes investigation. In the perspective of criminal procedural law in Indonesia, according to Van Bemmelen, this investigation means the initial stage in criminal procedural law, to uncover material truth⁵.

According to M. Yahya Harahap⁶, former chief justice in Indonesia, that the act of investigation can be equated with an act of investigation as an effort to find traces in the form of information and evidence of an event that is alleged to be a criminal act, while the investigator is regulated in Article 1 point 4 of the Act Criminal Procedure Law in Indonesia, namely: "Investigator is the Police Indonesia who is authorized by this law to conduct investigation.

Based on such description, the investigation is one way or method or part of the function of investigation that precedes other actions, namely action in the form of arrest, detention, search, confiscation, examination of letters, summon, inspection action, and submission of files to the public prosecutor. It means that an investigation is carried out by an investigating official, doing investigation is to intent and to purpose collecting of preliminary evidence or sufficient evidence⁷.

⁴ Widia Primastika, "Causes of Child Crime: Lack of Affection and Social Recognition", *tirto.id-hukum*, 29, 2018, July.

⁵ Andi Hamzah, *the Indonesia Criminal Procedure Code*, Second Edition, Sinar Grafika, Jakarta, 2008, p. 114.

⁶ M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code, Investigation, and Prosecution*, Second Edition, Sinar Grafika, Jakarta, 2009.

⁷ M. Husein Harun, *Investigators and Prosecutors in the Criminal Process*, Rineka Cipta, Jakarta, 1991, p. 56.

All articles in the law on the protection of children in Indonesia are philosophically a form of legal protection for children because children are human. However, the law on children protection in Indonesia has specifically regulated children's civil rights. Waluyadi⁸ stated that the rights of children according to the Act on Children Protection in Indonesia, among others: The right to get protection by parents, family, community and the state; The right of children from the womb to live, maintain life, and to improve their standard of living; Children's rights from birth to name and nationality; The rights of physically handicapped children, also to obtain care, education, training, and special assistance at the expense of the state. A child has the right to be guaranteed life in accordance with the dignity of its humanity. A child also has the right to increase self-confidence, and ability to participate in the life of the community, nation and state, the right to worship according to its religion, thinking, and expression according to its level of intellect and age under the guidance of parents or guardians; The right to know who their parents are, to be raised, and to be cared for by their own parents; The right to be raised, cared for, educated, directed, and guided by his parents or guardians to adulthood with the provisions of legislation; The right to get foster parents or guardians based on court decisions if both parents have passed away or they cannot carry out their obligations as parents.

Children's civil rights which are also guaranteed by law in Indonesia, among others:

1. The right not to be separated from their parents, unless there are legitimate reasons and rules that indicate that the separation is in the best interest of the children;
2. The right to obtain education and teaching in the context of personal development in accordance with their interests, talents, and level of intelligence;
3. The right to seek, to receive, and to provide information in accordance with the level of intellectuality and age for the sake of self-development as long as it is in accordance with the values of decency and propriety;
4. The right to rest, to associate with children of the same age, to play, to get recreation, and to create according to their interests, talents, and level of intelligence for the sake of their development;
5. The right to obtain health services and social security appropriately, according to their physical and mental spiritual needs;
6. The right not to be involved in events of war, armed disputes, social unrest, and other events that contain elements of violence;
7. The right to obtain protection from economic exploitation activities, so that it can disrupt their education, physical health, morals, social life, and mental spiritual;
8. The right to obtain protection from sexual exploitation and harassment activities, kidnapping, child trafficking, and from various forms of narcotics, psychotropic and other addictive substances abuse;
9. The right not to be subjected to mistreatment, torture or inhuman punishment;
10. The right not to be sentenced to death or a life sentence if they commit a crime;
11. The right not to be deprived of liberty against the law;
12. The right not to be arrested, not to be detained, or not to be punished except for applicable legal reasons and it can only be carried out as a last resort;
13. The right to be treated humanely and by paying attention to personal development needs in accordance with their age and must be separated from adults, except for their sake;
14. The right to obtain legal assistance effectively at every stage of the applicable legal effort;
15. The right to defend themselves and to obtain objective and impartial justice in the Juvenile Court in a closed session.

In the juvenile justice system in Indonesia states that every child has the right to obtain legal protection from all forms of physical violence or mental violence, neglect, ill-treatment and sexual harassment as long as in the care of their parents or guardians, or other parties and those responsible for caregivers the child. If parents, guardians, or caregivers do all forms of physical abuse or mental violence, neglect, ill-treatment, and sexual harassment including rape, and physical abuse of children. which should be protected, the perpetrators must be punished.

For children who are in the process of being investigated by police in Indonesia⁹, they have civil rights to be protected. The Civil rights of Indonesia Children, including the right not to be sentenced to death or a life sentence if child commits a serious crime. Right not to be deprived of liberty towards the law¹⁰. The right not to be arrested, not

⁸ Waluyadi, *The Law Protection for Children*, Mandar Maju, Bandung, 2005, p. 10.

⁹ Melly, H. Saleh Muliadi, Lembang Palipadang, "Legal Protection for Children In The Rape", *Journal of Katalogis*, Volume 5, Issue 2, February 2017, p. 57-62.

¹⁰ Andi Ristianto, "The Law Process Against Children In Crime", *Journal of Law Faculty, Atma Jaya University*, Jogjakarta, 2017, p. 48.

to be detained, or not to be punished except for applicable legal reasons and this can only be carried out as a last resort. The right to be treated humanely and by paying attention to personal development needs in accordance with his age and must be separated from adults, except for his sake. The Right to obtain legal assistance or other assistance effectively in every stage of the applicable legal effort. The right to defend themselves and obtain justice in front of an objective and impartial Child Court in a session that is closed to the public. All children's rights contained in these articles must be obtained by children so that children can grow up normally and well in accordance with human dignity. All of these rights are also a form of legal protection for children's rights.

All children's civil rights contained in the children protection law in Indonesia are legally stipulated so that children in Indonesia can grow normally and well, in accordance with human dignity. All of these rights are also a form of legal protection for children's civil rights in Indonesia.

Conclusion and Recommendation:-

The author concludes the results of research that the police in the process of investigating children as perpetrators of crimes in Indonesia, normatively, according to The Act of No. 35 of 2014, children should not be treated as perpetrators of crime as adult, but children are treated specifically, as a human being who needs special guidance. That is, these children should be given civil rights.

The police in conducting investigation on children as perpetrator of crime, should also rely on the concept of Restorative Justice as mandated by The Act of No. 35 of 2014. The investigation efforts are based on Restorative Justice, namely by conducting investigation that prioritizes human values and justice in accordance with the development of the soul and the age of the child, as well as the investigative efforts undertaken were carried out by integrating the role of the community and other parties which were concerned on the future of children in Indonesia.

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