

**INVESTIGATION OF CHILDREN AS A CRIMINAL CONDUCT OF DEATH
LEADING ABUSE (A CASE STUDY IN THE LEGAL AREA OF THE
BULELENG RESORTS POLICE)**

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Abstrak

Penelitian ini bertujuan untuk menganalisis, pelaksanaan penyidikan terhadap anak sebagai pelaku tindak pidana penganiayaan yang mengakibatkan kematian di wilayah hukum Kepolisian Resor Buleleng serta kendala yang dialami penyidik dalam melaksanakan proses penyidikan terhadap anak. Penelitian ini menggunakan jenis penelitian empiris, dengan sifat penelitian deskriptif, data dan sumber data dibedakan menjadi data primer dan data sekunder yang terdiri dari bahan hukum primer, bahan sekunder dan bahan tersier, kemudian menggunakan teknik pengumpulan data dengan teknik studi dokumen, teknik observasi, serta teknik wawancara, dalam teknik penentuan sampel digunakan teknik *non probability sampling* yakni purposive sampling, data penelitian ini diolah dan dianalisis secara kualitatif yang disajikan secara deskriptif kualitatif. Lokasi penelitian dilakukan di Polres Buleleng. Subjek dari penelitian ini ialah pihak-pihak yang mengimplementasikan dari penyidikan terkait penganiayaan yang mengakibatkan kematian yang dilakukan oleh anak dibawah umur. Hasil penelitian menunjukkan bahwa pelaksanaan penyidikan yang dilakukan sesuai dengan sistem peradilan pidana anak, penyidikan tetap mengedepankan perlindungan anak namun dalam implementasinya masih memiliki beberapa kendala, adapun kendala yang dialami oleh penyidik selama melaksanakan proses penyidikan dikarenakan pelaku masih tergolong anak dibawah umur maka dilihat dari tenggang waktu pelaksanaan penyidikan yang cenderung singkat akan menjadi kendala bagi penyidik dalam hal menemukan barang bukti, pemanggilan saksi, meminta keterangan.

Kata Kunci : Penyidikan, Penganiayaan, Anak.

Abstract

This study discusses to analyze, the implementation of research on children who oppose criminal acts of persecution carried out in the jurisdiction of the Buleleng Resort Police and the protection needed by investigators in the process of investigating children. This research uses empirical research, with descriptive research types, data and data sources are divided into primary data and secondary data consisting of primary legal materials, secondary materials and tertiary materials, then using data merging techniques with document study techniques, observation techniques, and interview technique, in the sample selection technique using non-probability sampling techniques, namely purposive sampling, the data of this study were processed and analyzed qualitatively presented in a descriptive qualitative manner. The location of the study was conducted at the Buleleng Police Station. The subjects of this study were the parties involved in the study involving deaths carried out by minors. The results showed that the investigation carried out in accordance with the juvenile justice system, the investigation continues to prioritize child protection. Related to what is broadcast by the investigator during the process of education which is well done which is carried out with the consent of the children but concerns issues that are classified as minors who have been known in advance from the time limit for conducting the investigation which is demanded quickly will lead to investigators in terms of looking for evidence, witnesses, questions and answers.

Keywords: *Investigation, Abuse, Children.*

Introduction

The state of Indonesia as a rule of law is a mandate contained in the constitution of the Republic of Indonesia in article 1 paragraph (3) of the 1945 Constitution, the clearest form of legal sanctions is seen in criminal law (Kusumaatmaja, 2009: 44).

Law functions in regulating life between humans and humans, human relations with their social environment, as well as human relations with the state so that everything that is done by society must be in accordance with the law in order to run in an orderly, peaceful manner and create balance in society. In line with the high level of crime in Indonesia, even though there are already strict sanctions in norms and laws, the reality is that lately various kinds of crimes have grown along with the development of society, one of which is crimes against life. The social phenomenon that coexists with the community is the criminal act of persecution. Various criminal acts of physical abuse often cause the victim to experience physical disability, serious injury and even death.

The crime of torture or mishandeling comes from the word 'aniaya' which means an act of torture deliberately causing pain or causing injury to the body of another person and even causing the death of the victim (Moeljatno, 2000: 198).

A criminal act in the second and third books of the Criminal Code, usually begins with the word 'whoever' this implies that the person who can commit a criminal act or the subject of a crime is a human. Then what if the legal subject in question is a minor as the perpetrator of a criminal act of torture which results in death so that he has to face the law, when on the other hand that the child is known to be under the protection of Law Number 35 of 2014 concerning Amendments to Law Number 23 Year 2002 concerning Child Protection, as well as where children as the nation's next generation in dealing with the law must still be detained for a short time in accordance with Article 3

of UURI No.11 of 2012 concerning the Child Criminal Justice System, as well as the right to continue to get education according to article 64 Child Protection Act.

Talking about children according to Augustine, children are not the same as adults, children have a tendency to (Soetedjo, 2017: 5) deviate from law and order due to limited knowledge and understanding of the realities of life, children learn more easily with examples acceptance and coercive rules. The age limit that can be categorized as a child according to Article 1 of Law No.11 of 2012 concerning the Criminal Justice System for Children is a child who is in conflict with the law is a child who is 12 years old but not yet 18 years old (Djamil, 2013: 10).

In the law on child protection, children who violate the law are given the term children who are in conflict with the law or ABH (Sambas, 2010: 90).

If we look at the development of criminal acts committed by children so far, both in terms of quality and modus operandi, the violations committed by children are considered to have disturbed all circles of society such as abuse committed by children and even resulted in death so of course it feels unfair to the victim's family. (Prodjodikoro, 2003: 72). Even in cases of persecution, many parties do not believe in the existence of such serious crimes committed by minors as if it is not directly proportional to the age of the perpetrator and even do not hesitate to make the victim die so that the threat of punishment imposed is in accordance with Article 351 paragraph (3)

The criminal justice process carried out by children, in the law enforcement system is enforced in an integrated manner by 4 sub-systems of power, namely the power to investigate, the power to prosecute, the power to adjudicate or impose crimes, and the power to execute or implement crimes and the first substance faced by children in conflict with the law is the investigative power system (Hartono, 2016: 43).

The investigation process is carried out by an investigator, regulated in Article 1 number 1 of the Criminal Procedure Code (Soetedjo, 2017: 10). On the other hand, the provisions for investigation have been regulated by Article 1 point 2 of the Criminal Procedure Code. In relation to the criminal justice process, this stage of investigation is the gateway which is the first stage that can determine whether the child will be subject to diversion or to undergo the next trial process (Djamil, 2012: 33). From this, it can be seen that dealing with child problems at the investigation level is deemed necessary as well as a guarantee for law enforcement officials to take actions.

The perpetrator is a child, treatment that is not in accordance with the procedures or procedures apart from tarnishing the image of the law in Indonesia can have a negative impact on the child's psychology, in that the investigation should be carried out using the procedures or procedures that apply in accordance with Law no. 11 of 2012 concerning SPPA.

The investigation process which experienced in its implementation experienced problems, one of which was in the phenomenon of the case of children as perpetrators of abuse resulting in deaths handled by investigators at the Buleleng Police, where there was a criminal act of serious abuse committed by children on Wednesday, August 8 2018 at around 20.00 WITA located at the Al Uhuwah Mushola in Br.Dns. West Jalan Pegayaman Village, Sukasada District, Buleleng Regency, the case involved a child with the initials HI who tortured him until the victim died due to emotions, but the case was resolved in 2019. According to Mr. Dewa Agung as Mindik at the Buleleng Police, that in this case the investigation experienced several obstacles due to the obstacles experienced by the investigator during the investigation process.

Here it can be seen that the investigation process is in order to achieve the objectives of Criminal Law Enforcement. In addition, because of frequent polemics that the investigation process is protracted (Wahyudi, 2011: 26). The existence of a short time limitation reflects the obstacles experienced by child investigators in carrying out their investigations.

The magnitude of the impact that can be generated from the investigation stage on the mechanism of the juvenile justice process which should be carried out briefly in accordance with the Law on the Juvenile Criminal Justice System, where the provisions require that the examination be carried out in an effective approach which means that the examination does not take a long time, using language that is easy to use, understand and can invite the accused to provide information in the clearest possible way. Investigations must also be able to prioritize the interests of children as regulated in the Child Protection Law and in the Child Criminal Justice System, especially crimes committed by children, including acts that violate the Criminal Code such as torture which results in death threatening a sentence of 7 years.

The process of investigating children who are faced with the law in cases of children as perpetrators of abuse resulted in deaths committed by children in the jurisdiction of the Buleleng Police, so the authors are interested in writing with the title "Investigations Against Children as Perpetrators of Torture That Resulted in Death (Case Study in the Region Buleleng Police Law)".

Based on the above background, the formulation of the problem raised is:

1. What is the process of investigating children as perpetrators of criminal acts of torture that resulted in death in the jurisdiction of the Buleleng Police?
2. What obstacles are preventing the police from investigating criminal acts of child abuse in the jurisdiction of the Buleleng Police?

Research methods

This type of research used in this research is a type of empirical legal research. Empirical legal research is research that refers to legal realities that include social or cultural realities, research on the imposition of sanctions against the perpetrators of murder in the Singaraja District Court. This research is descriptive in nature and uses data and sources, namely primary data and secondary data, namely primary legal materials and secondary data, namely primary legal materials, secondary legal materials and tertiary legal materials. In order to collect primary and secondary data, the authors use three types of data collection, namely document study techniques, interview techniques and observation or observation techniques. The technique of determining the research sample uses non-probability sampling techniques and the form of purposive sampling.

Results and Discussion

Investigation of Children as Perpetrators of Criminal Offenses of Torture Resulting in Death in the Jurisdiction of the Buleleng Resort Police

The beginning of a series of criminal justice is an act of investigation and investigation to find an answer to the question of how a criminal event can occur. There are many elements that must be fulfilled to complete the files during the investigation process, if they are fulfilled then the fulfillment of the elements in a criminal incident is ready to be processed.

Investigation is a step in applying knowledge about two jurisdictions, namely the normative jurisdiction and the sociologically progressive jurisdiction. The normative jurisdiction means that investigators will only follow a series of laws and regulations. This series of legal or statutory rules will be the target or measure for the completion of the legal process at the investigation level, in normative jurisdictions only as a branch or only as a simple formulation of the real legal objectives (Hartono, 2010: 37).

A series of investigative actions are all actions in the name of the law that are carried out by an investigator, starting from summoning, issuing a Bapas letter, confiscating evidence, examining and other actions regulated in the provisions of the applicable law or legislation, to the investigation process said finished. When the files have been completed, the case files are then transferred to the Public Prosecutor to carry out the next process. Before carrying out an investigation, investigators are required to issue and send a Notification Letter on the Commencement of Investigation (SPDP) to the Prosecutor's Office with the aim of serving as a horizontal monitoring function. In this case, because the perpetrator is a child who is classified as a minor, it must follow the provisions in the Juvenile Criminal Court System Law. Child investigators will also be distinguished from adults.

Investigations of children as perpetrators of criminal acts should be carried out by means or procedures that apply in accordance with the Law on the Criminal Justice System for Children, because this law specifically regulates the criminal justice system for children as perpetrators of criminal acts. In line with the existence of the Juvenile Criminal Justice System Law, investigators of child cases are differentiated from adults, this is based on the legal basis of Article 26 of the Juvenile Criminal Justice System Law.

The investigation process begins with receiving a report that a criminal act has occurred, from here the investigator will determine whether the report is a criminal act or not, then if the report is a criminal act in carrying out the process of investigating a child, the investigator must first check the age of the delinquent child.

If the child has committed a criminal offense before the age of 12 (twelve) years, the investigator in the investigation process makes a decision to return the child to the parent or guardian or to include him in education, guidance and guidance programs in government agencies or LPKS in agencies that handle the welfare sector. social. On the other hand, if the investigator finds a delinquent child who has committed a crime that is not yet 18 (eighteen) years old is brought to court after the child is over 18 (eighteen) years of age but has not yet reached 21 (twenty one) years, then the child remains will be submitted to the children's trial.

When it is discovered that the perpetrator is a minor, the investigator will coordinate with the Correctional Center (Bapas). Furthermore, Bapas will carry out community research, the results of which will conclude whether the case will proceed to the next stage or to carry out diversion. Societal research is a specialty obtained by minors as perpetrators of criminal acts as children who are in conflict with the law have the right to receive protection.

Basically, the substance that most distinguishes child investigation is the existence of strict regulations regarding the obligations of restorative justice and diversion which are intended to prevent children from being threatened with criminal punishment. Diversion in the process of investigating, prosecuting and examining children's cases must be pursued in accordance with Article 7 of the Juvenile Criminal Justice System Law. Diversion is a diversion of settlement in cases of children who are suspected of

committing criminal acts, therefore not all cases of children in conflict with the law must be resolved through formal justice channels, and provide alternative solutions with restorative justice by considering justice for the victim.

Based on Law Number 11 of 2012 concerning the Criminal Justice System for Children in Article 1 Paragraph (6), restorative justice is the settlement of criminal cases by involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly seek solutions fair by emphasizing restoration to its original state, and not retaliation

Bapas will carry out a juridical analysis related to this case, in which the perpetrator violates Article 351 paragraph (3) of the Criminal Code with a maximum imprisonment of 7 (seven) years on the basis that he has fulfilled the elements of the Article such as the perpetrator's intent to commit torture. the act of maltreatment by the perpetrator, the result of the act, and pain in the victim's body. As stipulated in Article 7 of Law No.11 of 2012 concerning the Juvenile Criminal Justice System, diversion cannot be carried out in solving this problem.

In this case, the child cannot be carried out for diversion because it is threatened with a sentence of 7 (seven) years in prison. The perpetrator commits an act that is included in the criminal act of torture which results in death as regulated in Article 351 paragraph (3) of the Criminal Code, this is based on the fact that the death of the victim is not the goal of the perpetrator but is only a result of the perpetrator's actions which are not intended to cause the death of the victim, whereas on the other hand, if the original purpose or intention of the perpetrator was indeed the death of the victim, then this would be included in Article 338 of the Criminal Code, namely regarding murder where the death was deliberate in the intention.

If the implementation of diversion is not achieved, then the investigator will continue to search and confiscate the evidence used in the criminal act regulated in Article 1 number 16 of the Criminal Procedure Code. evidence with a criminal act will be at high risk of failure in the next stage of the investigation.

The next stage is summoning, this is carried out by the investigator with his obligations as stipulated in Article 7 paragraph (1) letter g which explains that summoning a person to be heard and examined as a suspect or witness, summoning is a legal action taken by the investigator as his authority to someone so that come to the office for certain interests related to criminal law events that have occurred.

If the summoning of witnesses is capable of being carried out, this is carried out by the investigator with the obligations as stipulated in Article 7 paragraph (1) letter g which explains that summoning a person to be heard and examined as a suspect or witness, the summoning is a legal action carried out by the investigator as a authority to someone to come to the office for certain interests related to criminal law events that have occurred. The existence of a summons will have legal consequences that have implications. The investigation is continued with the stage of examining the suspect which will be stated in the Investigation Report or BAP made for the purpose of making a clear picture of the criminal incident against the suspect by asking a number of questions which are intended to extract information or an explanation of a crime committed by a child.

Examination is carried out by reconstruction of the course of the case where the child suspect is examined with the aim of obtaining information, clarity and matching the suspect and existing evidence by considering the rights of the child where the perpetrator is accompanied by a legal advisor, this is based on the suspect's right for

defense purposes, as long as in at the time and at the level of examination according to the procedures stipulated in the law, and if the child offender is not economically limited so that he cannot use a legal attorney, the officials concerned at all levels of examination in the criminal justice process are obliged to appoint a legal advisor for them in accordance with Article 56 paragraph (1) KUHAP.

In addition, because the suspect is a minor, in carrying out an examination the investigator is obliged to examine effectively and sympathetically, in accordance with Article 18 of Law No.11 of 2012 the provision that requires that the examination of children be carried out effectively and sympathetically, effectively meaning that the examination must not eat a long time, using language that is easy to understand for children. Sympathetic means that at the time of the examination, the investigator is able to be polite and friendly to the child so that the child does not feel pressured during the examination process, and when conducting the examination process, the investigator is not allowed to wear a uniform but wear clothes so that the child's psychology does not feel scared.

This is a difference or distinction for children who are not the same as adults, as an effort to protect children's rights and provide legal protection for child suspects. The special substance obtained by the child, namely that during the investigation, must be processed in a kinship atmosphere and the identity of the child must be kept secret with the aim that the identity of the child is not published, this is because children are the next generation of the nation who are considered capable of improving themselves and have a future of course so that does not cause traumatic effects and disturbs the psyche and development of children.

In addition to examining suspects, investigators will also conduct examinations of witnesses for questioning in accordance with Article 1 number 26 of the Criminal Procedure Code as well as examination of TKP (Place of Case).

The next stage of investigating children is detention. In line with Articles 32 and 33 of the Juvenile Criminal Justice System Law, that regarding the period of detention for children during detention is 7 (days) with an extended period of detention of children if the investigation process has not been completed will be extended for a maximum of 10 (ten) days while for adults it is extended. a maximum of 40 (forty) days, and detention of children is carried out in a special place for children.

In this case, the child was not detained but only carried out a compulsory report due to the short detention period and other basic reasons from the investigator.

After all the processes have been carried out, then proceed with the case storage and delegation of the case to the public prosecutor, the transfer of investigation files to the Public Prosecutor is carried out within a period of 30 (thirty) days. The Attorney General's Office will examine whether the case file is complete, in accordance with Article 8 paragraph (3) b, Article 138 paragraph (1) and Article 139 of the Criminal Procedure Code, the Police must hand over the responsibility of the suspect and evidence to the Prosecutor's Office. This is where an investigation can be said to end if in connection with the delivery of a suspect and evidence to the Prosecutor's Office, automatically there is a handover of responsibility for handling to stage 2 to the Prosecutor's Office.

The investigation process of the juvenile case is considered complete if within 14 (fourteen) days of notification from the Public Prosecutor that the investigation files are complete so that the handover of legal responsibility from the submission of the case

files is transferred from the investigator to the Public Prosecutor has been valid, either from evidence or suspects and objects confiscated.

Obstacles That Hinder the Police in Carrying Out the Process of Investigating the Crime of Torture by Children in the Legal Territory of the Buleleng Police

In general, the implementation of the investigation process has been running in accordance with the operations stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, however in the application process in the field there are obstacles that prevent investigators from carrying out the investigation process. Even so, in general the investigation is running smoothly, however in its implementation there are obstacles faced in practice that can hinder investigators from carrying out the process of investigating children. These constraints occur because the formal legal process is operationalized, and the material law is applied in case handling, so that in some cases that causes diversion to be unable to carry out, further investigation processes are carried out resulting in investigators experiencing problems in carrying out criminal investigations committed by children in the region the law of the Buleleng Resort Police. This obstacle resulted in obstruction of the investigation process.

The obstacle for investigators in carrying out investigations against first child offenders is the constraint of time constraints, in line with Article 18 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, where this provision requires that the examination be carried out with an effective approach which means that the examination does not take long, in carrying out investigations the investigator has limited time to process files of criminal acts with limited time given to reveal the criminal act, the investigator has difficulty completing the determined case files.

Furthermore, the time limitation is due to the limited number of witnesses constraints and difficulties in bringing witnesses to come, whereas according to Article 1 point 26 of the Criminal Procedure Code, the witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case that he has heard himself. himself, and he experienced it himself, sometimes the occurrence of a criminal act with minimal witnesses and even no witnesses so that this can hinder the process of carrying out an investigation. In addition to that, the problem of summoning witnesses, witnesses who are summoned but not present can hamper the investigation process because witnesses are reluctant to attend summons on the grounds that they are lazy to participate in convoluted investigation activities or are even afraid of investigators and do not want to interfere in legal matters.

The process of searching for evidence is difficult, evidence is items that are related to a criminal event that has occurred either directly or indirectly, evidence is one of the mandatory requirements during an investigation as a symbol that has been used in a criminal act.

Regarding the fulfillment of evidence in this case, the child investigators at the Buleleng Police encountered problems in finding evidence because sometimes the evidence that must be present in the fulfillment of evidence to strengthen the occurrence of a crime committed by this child has been eliminated or eliminated by the suspect so that in the search process takes a long time, of course this can disturb the investigation.

Geographical conditions in Buleleng, the geographical conditions of Buleleng which hampered the execution of the summoning of witnesses which was far from the location of the Buleleng Polres so that it was possible to take time for the summons, besides that

when the investigators picked up the witnesses were not there because they were working or carrying out other activities so that it was necessary to recall by investigators.

When the perpetrator is not cooperative in providing information, the victim and witnesses do not match their testimony, here in the examination there are witnesses and suspects who are not cooperative by not providing information openly and as if they do not want to interfere in the investigation process because they are considered convoluted and reluctant to attend. In addition, the Buleleng Police Women and Children Protection Unit usually experiences problems when the child offender avoids or does not admit to his actions so it takes a long time, the information obtained is too convoluted and will cause the investigation process to be ineffective considering the relatively short time for investigating children. In answering questions from investigators, sometimes children need time to answer questions while the investigation is taking place besides that the child is also deemed less able to cooperate in the investigation stage because the child has emotional instability.

Conclusion

The implementation of the investigation process against minors as perpetrators of criminal acts of torture resulting in death in the jurisdiction of the Buleleng Resort Police has carried out the investigation process as mandated in Law Number 11 of 2012 concerning the Criminal Justice System for Children in accordance with proper procedures but in its implementation, some obstacles to handling. Carrying out a further investigation process by summoning witnesses and continuing by issuing a letter of Bapas, confiscating evidence, examining up to stage 2 of submitting files to the Prosecutor's Office. The Child Protection Law mandates that the investigation process be carried out briefly in order to protect the needs of the child, so that in this case in practice the process of investigating children, especially those that fail to implement diversion, faces obstacles.

Then the obstacles that hinder investigators in carrying out the investigation process, most often because the investigation of children tends to be relatively short, therefore these constraints can hinder investigators in carrying out the investigation process, but in its implementation or implementation, the investigator in carrying out The investigation continues with professionalism and upholds the vision and mission of the National Police and the implementation of the Law, despite experiencing obstacles, they are still able to be overcome.

Suggestion

The Police as law enforcement officers and as the main gate in the implementation of criminal justice faced by children so that they continue to carry out investigations with kinship and be able to further increase effectiveness and sympathy optimally, as well as to all people who are witnesses in a criminal act to be more concerned and cooperative when asked by an investigator during a summons for examination and asked for information so that the implementation of the investigation of a criminal act can run smoothly, does not take time so as to avoid obstacles that will hinder the investigation process.

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