

**ALTERNATIVE DISPUTE RESOLUTION TO CHILDREN IN CONFLICT WITH THE LAW
ACCORDING TO JINAYAT LAW IN NANGGROE ACEH DARUSSALAM (NAD)**

**ALTERNATIF PENYELESAIAN SENGKETA TERHADAP ANAK YANG BERKONFLIK
DENGAN HUKUM SESUAI HUKUM JINAYAT DI NANGGROE ACEH DARUSSALAM
(NAD)**

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ABSTRACT

This research aims to determine the age limit of children and efforts to protect children in conflict with the law in Nanggroe Aceh Darussalam. This research is descriptive normative legal research. The approaches used are case approach and statutory approach. The technique of collecting legal materials uses literature study by using juridical analysis techniques in the form of exposure to legal materials. Based on the results of research and discussion, the author concludes that the legal system in Indonesia oversees several forms of main law in its existence in order to realize dignified justice, customary law is a complementary law, as is the case in NAD which is part of the national legal system, in dealing with one another subject to regulations and jinayat law. The existence of customary criminal law in life adds to the diversity of law, so that society is more awake with all the arrangements that exist geographically and has implemented qanun as a law specifically against children in conflict with the law.

Keywords: Jinayat Law; Criminal; Child Protection

ABSTRAK

Penelitian ini bertujuan mengetahui batas usia anak dan upaya perlindungan Anak yang Berkonflik Dengan Hukum di Nanggroe Aceh Darussalam. Penelitian ini merupakan penelitian hukum normatif yang bersifat deskriptif. Pendekatan yang digunakan adalah pendekatan kasus dan pendekatan perundang-undangan. Teknik pengumpulan bahan hukum menggunakan studi kepustakaan dengan menggunakan teknik analisis yuridis berupa pemaparan bahan hukum. Berdasarkan hasil penelitian dan pembahasan, penulis simpulkan bahwa sistem hukum di Indonesia menaungi beberapa bentuk hukum utama dalam eksistensinya demi mewujudkan keadilan yang bermartabat, hukum adat merupakan hukum pelengkap, seperti halnya di NAD yang merupakan bagian dari pada sistem hukum nasional, dalam berhubungan satu dengan lainnya tunduk kepada peraturan dan hukum jinayat. Keberadaan hukum pidana adat dalam kehidupan menambah keberagaman hukum, sehingga masyarakat lebih terjaga dengan segala tatanan yang ada secara geografi telah menerapkan qanun sebagai hukum secara khusus terhadap Anak yang Berkonflik Dengan Hukum.

Kata Kunci: Hukum Jinayat; Pidana; Perlindungan Anak

1. INTRODUCTION

Children are the next generation of the nation's ideals and are the most important part of the national development process as a human investment that should receive protection from both the government and society of a country. However, the socio-economic conditions of the country and parents make children unable to do things properly. Children are forced to work to help their families meet their daily needs. Indonesia is one of the countries that ratified the United Nations (UN) Convention on the Rights of the Child, through Presidential Decree (Keppres) Number 36 dated August 25, 1990. With the ratification of the convention,

the state should be legally obliged to protect and fulfill children's rights, both social, political, cultural and economic.¹

However, in reality the state is still unable to fulfill its obligations to fulfill children's rights. One of the problems that still often occurs is the existence of child labor. In addition to violating children's rights, the existence of child labor can also have a negative impact on the child itself, both psychologically and physically, and it is even feared that it can disrupt the future of children who should have a better life.

With these conditions, it results in many crimes, especially criminal acts committed by children, which are then commonly referred to as Children in Conflict with the Law. The crimes committed by these children are either motivated by the motive of meeting daily needs, or because of the lack of parental care or an environment that is less supportive. As a Child in Conflict with the Law, a child has the right to legal protection. Judging from the child's psychological condition which is not yet mature and stable, his attitude is still very stakeholder, so there is special legal protection for children who are directly dealing with the law. This legal protection is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Legal protection regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which has attempted to prevent children from the formal criminal justice system because exposing children to the formal criminal justice system is prone to causing mental shock to children who are not yet mature and weak. Mental shock in children is very dangerous because it can cause a decrease in children's immunity which can make children susceptible to disease, even a decrease in children's productivity. In addition, it is also prone to causing labeling of Children in Conflict with the Law if the child is convicted. As a result, children lose the opportunity to grow and develop naturally in terms of physical, psychological, social, and educational. They can lose the time when they should enjoy playing, learning, having fun, and finding peace.

There are problems related to the many crimes committed by these children, so the author wants to discuss Children in Conflict with the Law, but according to the Jinayat Law in Nanggroe Aceh Darussalam (NAD) regarding the implementation of alternative dispute resolution that will be taken by the people of Nanggroe Aceh Darussalam (NAD) because it is in an area that has these rules. The Province of Nanggroe Aceh Darussalam is known as a province that has special privileges. Based on Article 1 number 8 of Law No. 44 of 1999 concerning the Implementation of the Special Status of the Special Region of Aceh Province, this special status is a special authority owned by the Province of Aceh to be able to organize religious life, customs, education, and the role of clerics in determining regional policies.²

The legal basis that the author will use and the analysis of Children in Conflict with the Law in addition to considerations from the provisions of Law Number 11 of 2012 concerning the Child Criminal Justice System, but the author will also analyze alternative dispute resolutions that refer to the provisions of Aceh Qanun Number 6 of 2014 concerning Jinayat Law and Aceh Qanun Number 11 of 2008 concerning Child Protection, as well as other legal regulations related to alternative dispute resolution in the Nanggroe Aceh Darussalam (NAD) region. So in relation to this, the author wants to know what the age limit is for Children in Conflict with the Law in Jinayat Law in Nanggroe Aceh Darussalam (NAD), as well as legal protection efforts for alternative dispute resolutions for Children in Conflict with the Law according to Jinayat Law in Nanggroe Aceh Darussalam (NAD).

1.1. Problem Formulation

¹Hardius Usman and Nachrowi Djalal Nachrowi, *Workers Children in Indonesia: Conditions, Determinants and Exploitation* (Jakarta: Grasindo, 2004), 1.

²Law No. 44 of 1999 concerning the Implementation of the Special Status of the Special Region of Aceh Province.

Based on the background description above, the problem formulation that will be discussed is:

1. What is the age limit for children in conflict with the law in criminal law in NAD?
2. How are legal protection efforts for alternative dispute resolution for children in conflict with the law according to criminal law in NAD?

1.2. Writing purpose

The purpose of this paper is to determine the age limits and legal basis for children in conflict with the law according to criminal law in NAD and efforts to provide legal protection for alternative dispute resolution for children in conflict with the law according to criminal law in NAD.

2. METHODS

The research method used in this research is normative law, which is legal research conducted by examining library materials or secondary data.³ Legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues faced.⁴ Normative research aims to provide an explanation in accordance with the existing reality regarding the situation that occurs, using two methods of approach, namely the case approach and the legislative approach, using primary and secondary legal materials, namely Aceh Qanun Number 6 of 2014 concerning Jinayat Law and Aceh Qanun Number 11 of 2008 concerning Child Protection, namely the underlying regulations and literature and previous research results. In collecting legal materials in the form of literature studies by reviewing and analyzing the regulations that underlie and are relevant to the problem. To obtain conclusions from the problem using legal material analysis in jinayat law, namely description, interpretation, evaluation, argumentation and systematization techniques. So as to find out alternative dispute resolution for Children in Conflict with the Law according to jinayat law in NAD. The method used when conducting data analysis is the qualitative data analysis method, by analyzing library data with legal regulations in force in Indonesia related to jinayat law in Nanggroe Aceh Darussalam (NAD).

3. RESULTS AND DISCUSSIONS

3.1. Age limit of children in conflict with the law

3.1.1. Age Limits for Children in Conflict with the Law According to the SPPA Law

The rules governing children in conflict with the law are regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), in which children in conflict with the law, hereinafter referred to as Children, are children who are 12 (twelve) years old but under 18 (eighteen) years old who are suspected of committing a crime. In Indonesia, diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. It is explained that the Special Child Development Institution, hereinafter abbreviated as LPKA, is an institution or place where children serve their sentences. The Temporary Child Placement Institution, hereinafter abbreviated as LPAS, is a temporary place for children during the ongoing judicial process.⁵

Regarding the age limit for Children in Conflict with the Law who can be punished, it has been explained in Article 20 of the SPPA Law that, "*In the case of a criminal act committed by a child before the age of 18 (eighteen) years and brought to court after the child in question*

³Soerjono Soekanto and Sri Mamudji, *Normative Legal Research Brief Overview* (Jakarta: Rajawali Press, 2006), 13.

⁴Peter Mahmud Marzuki, *Legal Research* (Jakarta: Rajawali Press, 2005), 35.

⁵Article 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

has passed the age limit of 18 (eighteen) years, but has not yet reached the age of 21 (twenty one) years, the child will still be brought to a children's court.."⁶

In the case of a child under 12 years of age committing or suspected of committing a crime, the investigator, community counselor, will make a decision to hand over the child to the parents/guardian or include the child in an education and development program at a government agency or social welfare institution that handles the social welfare sector.

So it can be understood regarding the age limit called a child, namely those who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime or who are called Children in Conflict with the Law in Indonesia to be able to be held accountable for their actions, but do not set aside their right to receive legal protection because they are still considered "children" who need assistance. So in Indonesia, the diversion system is still the main priority, namely the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice process.

3.1.2. Age Limits for Children in Conflict with the Law According to Aceh Qanun Number 6 of 2014 Concerning Jinayat Law

Regarding the age limit for children according to Aceh Qanun Number 6 of 2014 concerning Jinayat Law, this is explained in Article 67 Paragraph (1) regarding Jarimah and 'Uqubat for Children, which states that, *"If a child who has reached the age of 12 (twelve) years but has not reached the age of 18 (eighteen) years or is not yet married commits a crime, then the child may be subject to a maximum fine of 1/3 (one third) of the fine determined for adults and/or returned to his/her parents/guardian or placed in a place provided by the Aceh Government or the Regency/City Government.."*⁷

So it can be understood that Children in Conflict with the Law (ABH) in Aceh, in accordance with Aceh Qanun Number 6 of 2014 concerning Jinayat Law, have special provisions that are different from general juvenile criminal justice in Indonesia. The Qanun regulates that the examination of children who commit jarimah (actions prohibited in Islamic law) is carried out based on laws and regulations concerning juvenile criminal justice. In addition, there are differences in the age of the child and the punishment that can be imposed, where the Jinayat Qanun provides an opportunity for judges to impose physical punishment on children who violate the provisions stipulated. In Aceh, children who violate the law can be subject to sanctions in accordance with the Aceh Jinayat Qanun, which regulates punishments according to Islamic law. These sanctions can be in the form of caning, imprisonment, or fines, with special provisions for children. Children who have reached the age of 12 but are not yet 18 or are not married can be subject to sanctions of up to one third of the sanctions given to adults.

3.2. Legal Protection Efforts for Alternative Dispute Resolution for Children in Conflict with the Law According to Jinayat Law in NAD

3.2.1. Legal Protection Efforts for Children in Accordance with Customary Law

Protection of the existence of customary criminal justice in Aceh is manifested in the existence of Qanun Number 9 of 2008 concerning the Development of Customary Life and Customary Traditions, Aceh Qanun Number 10 of 2008 concerning Customary Institutions, and has also been regulated in Aceh Governor Regulation Number 60 of 2013 concerning the Implementation of Customary & Customary Dispute Resolution for Children in Conflict with the Law. In general, Law Number 11 of 2012 concerning the latest Juvenile Justice System in Indonesia has begun to make changes to several systems and patterns of handling Children in Conflict with the Law. However, apart from customary law itself, regarding Children in Conflict with the Law in Nanggroe Aceh Darussalam (NAD) more specifically related to jinayat law has

⁶Article 20 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

⁷Article 67 Paragraph (1) of Aceh Qanun Number 6 of 2014 concerning Jinayat Law.

been regulated in Aceh Qanun Number 6 of 2014 concerning Criminal Law and Aceh Qanun Number 11 of 2008 concerning Child Protection.

In this case, it is no different in the case of dispute resolution/conflict carried out by Children in Conflict with the Law in Law No. 11 of 2006 concerning the Government of Aceh, where before the case was resolved in court, in the jurisdiction of Aceh it has provided a stronger foundation in the development of customary life and customs in the Province of Nanggroe Aceh Darussalam. Article 98 of the Law orders the regulation of duties, authorities, rights and obligations in implementing the development of customary life and customs by forming an Aceh Qanun. Customary institutions that have developed in the lives of the Acehnese people from the past until now have functions and roles in fostering cultural values, customary norms and rules to realize security, harmony, order, tranquility, harmony and welfare for the Acehnese people as a manifestation to realize common goals in accordance with the wishes and interests of the local community.⁸

Customary institutions are autonomous and independent as partners of the Aceh Government and district/city governments according to their levels.⁹ Technically in the application of local customary law, a case will be processed according to customary law at the Nanggroe Aceh Darussalam (NAD) level with customary courts, so the case must first be reported to the customary apparatus. If a case has been reported to the *keuchik*, *tuha peut*, *teungku imum* or secretary of Nanggroe Aceh Darussalam (NAD) by the victim, then it can be resolved according to customary law. If it is known that there is a child in conflict with the law, then in the customary tradition in Nanggroe Aceh Darussalam (NAD) before the trial process is carried out, the customary and legal apparatus in Nanggroe Aceh Darussalam (NAD) will summon or visit the child's parents to inform them and ask for accountability for the case being faced.

In addition, the existence of customary law mechanisms in the Aceh Governor Regulation Number 60 of 2013 concerning the Implementation of Customary & Customary Dispute Resolution, states that it has regulated the deliberation session for dispute resolution involving women and children, both as perpetrators and victims, to be carried out in private at the house of one of the customary leaders such as the house of the *keuchik*, *imuem meunasah* or the house of a member of *Tuha Peut* or other name, which is in accordance with the circumstances of each *Gampong* or other name or *mulim* or other name.¹⁰ So it can be understood that when a case occurs that is committed by a child, then in the Nanggroe Aceh Darussalam (NAD) region itself, the authority is to resolve the case according to customary law, which is expected to be resolved amicably considering the best interests of the child himself.

For the traditional community of the village, kinship is the main principle in the Aceh customary court deliberation. When legal problems and events occur in society, they are always resolved in a familial manner and prioritize the principle of sincerity between them. Settlement of disputes/disputes with customary law is a good deed and noble in its position both in living together in the world and in the sight of Allah, because customary law and Islamic law are very closely related, the principles contained in Aceh customary law are teachings in Islam. Where every resolution of disputes/disputes that encourage peace.¹¹

In Qanun 9 of 2008 concerning Customary Life and Customs, the types of sanctions imposed are regulated as stated in Article 16 Paragraph (1), however, for Children in Conflict with the Law, sanctions are needed which are not intended to punish but to foster, improve

⁸ Article 98 of Law No. 11 of 2006.

⁹ Article 3 of Aceh Qanun Number 10 of 2008 concerning Customary Institutions.

¹⁰ Article 16 Paragraph (8) concerning Aceh Governor Regulation Number 60 of 2013 concerning the Implementation of the Settlement of Customary and Customary Disputes.

¹¹ Taqwaddin, Integration of Islamic Law and Customary Law in its Implementation in Acehnese Society, paper presented as discussion material at the ToT on Strengthening the Capacity of Customary Figures, implemented by ACE – MAA, Banda Aceh, January 24, 2009.

and aim to restore the parties.¹² So some villages in Aceh Besar have created village reusam regarding handling of children's cases. Some sanctions that can be given to children through the village customary justice mechanism include the following:

- a. Advice;
- b. Reprimand;
- c. Statement of apology;¹³
- d. Fine;
- e. Compensation;
- f. Returned to family and community for construction;
- g. Staying at a Dayah or similar institution to study for a certain period of time;
- h. Cleaning the meunasah or mosque or other public facilities in the village;
- i. Being a muezzin in a mosque for a certain amount of time;
- j. Memorize juz 'amma in a certain amount.

The purpose of imposing sanctions on children is to provide a sense of responsibility to children, not to punish or provide a deterrent effect. Therefore, sanctions must be educational, appropriate to the age and type of violation, not burden the child psychologically, prioritize the child's best interests, focus on prevention without calling the child a perpetrator of the crime, and pay attention to justice, both for children as victims and perpetrators.¹⁴

1. Legal Protection Efforts for Children in Accordance with Criminal Law

The term regulation in Aceh is called Qanun. Qanun is a legislative product on a regional scale or commonly called Perda Syariah. In society, the term Qanun for a legal rule or for naming a custom has long been used and has become part of the culture and customs of the Acehnese people. Qanun usually contains rules regarding Islamic law that have adapted to become Acehnese customs. In terms of legal hierarchy in Indonesia, Qanun is equated with Regional Regulations/Perda in other provinces.¹⁵ Customary justice processes in Aceh are often characterized by principles of restorative justice, which aim to restore relationships and harmony, rather than simply impose punishment.¹⁶

Issues related to Children in Conflict with the Law are important to be studied and researched further because the position of each child is very vulnerable and can trigger violations of the child's human rights. In general, if examined from Law No. 11 of 2012 concerning the latest Juvenile Criminal Justice System, Indonesia has begun to make changes to several systems and patterns of handling Children in Conflict with the Law. Enthusiasm Restoration of justice and diversion in child cases is very strong. Settlement of child cases outside the criminal justice system is a new thing in Indonesia.

According to Muladi, *restorative justice* or restorative justice itself is a theory that emphasizes restoring losses caused or caused by criminal acts. Restoring these losses will be achieved through cooperative processes that include all interested parties.¹⁷ Where in this case mediation is a safer way to resolve conflict by relying on non-violent methods, and controlling a hot heart. However, cool-headed or not, in fact every dispute is always accompanied by the angry emotions of the parties. Thus, the role of the mediator during the mediation is very important in order to create a peaceful and conducive atmosphere.¹⁸

¹²Article 16 of Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and Traditions.

¹³ *Ibid.*, 79.

¹⁴ *Ibid.*, 80.

¹⁵Yahya Abdi Nugroho, "Dynamics of the Aceh Legal Justice System Through Customary Court Institutions", *Journal of Law and Human Rights Wara Sains* 2, No. 10 (2023): 989.

¹⁶ *Ibid.*, 986.

¹⁷Muladi, *Selected Chapters on Criminal Law* (Semarang: Diponegoro University, 1995), 125.

¹⁸Damanik, *Human Rights Mediation Training Module* (Jakarta: National Human Rights Commission, 2005), 7.

In the case of the settlement of children's matters, as for implementation of restorative justice through diversion in the jurisdiction of Banda Aceh based on Qanun Number 11 of 2008 concerning Child Protection, where the implementation of diversion is the existence of a number of adequate regulations governing diversion and child protection in general.¹⁹ *Law a quo seeks* to provide protection for children, outside the formal justice system through the principle of diversion. The diversion process is carried out by involving traditional figures, religious figures, and local communities in a more rehabilitative resolution effort.²⁰

This is in line with the principles and objectives of Article 2 and 3 of Qanun Number 11 of 2008 concerning Child Protection, in which child protection aims to ensure the fulfillment of children's rights to live, grow, develop, and participate optimally in accordance with human dignity and honor, and receive protection from exploitation, violence and discrimination, in order to realize children who are qualified, have noble morals, and are prosperous.²¹

Every Child in Conflict with the Law has the right to receive protection provided by individuals, community institutions or professional institutions working for it. The Aceh Government and district/city governments are obliged to provide legal aid to children in conflict with the law.²² Article 40 Paragraph (1) of Aceh Qanun Number 11 of 2008 concerning Child Protection explains that children who are faced with criminal acts can be resolved outside the court if the child is still 12 years old or under, the threat of punishment imposed is up to 1 (one) year, the consequences caused by the crime are material including all cases of theft that are not related to the body and life, as well as fights that do not cause physical disability and loss of life. Also the explanation in Paragraphs (2), (3) and (4) that the settlement outside the court as prioritizing the principle of the best interests of the child by using local customary law or culture, where the settlement outside the court involves community participation by involving traditional leaders, religious leaders, community leaders and other institutions that care about child protection.²³ Legal actions that are decided and imposed on children who are in conflict with the law are done with a welfare and justice approach in the form of punishment for children with a diversionary and restorative justice approach.²⁴

4. CONCLUSION & SUGGESTION

4.1. CONCLUSION

The age of children recognized in the qanun, and referring to the provisions of Qanun Number 11 of 2008 concerning Child Protection, namely that children can be subject to criminal provisions if they have reached the age of 12 (twelve) years but have not reached the age of 18 (eighteen) years. This is different from the legal policy regulated in the SPPA Law which stipulates that children under the age of 14 (fourteen) years can only be subject to action. In addition, the criminal provisions applicable to the child are a maximum of 1/3 (one third) of the sentence imposed on adults. This is different from that regulated in the SPPA Law where the reduction of sentences for children only applies to imprisonment, and applies 1/2 (one half) of the prison sentence provisions applicable to adults. The matters described regarding the sentence for children can be interpreted as retributive goals for children. The

¹⁹Mansari, "Implementation of Diversion Against ABH Based on Aceh Qanun Number 11 of 2008 Concerning Child Protection", *Gender Equality: International Journal of Child and Gender Studies* 2, No. 1 (2016): 60.

²⁰Rini Anggreini and Devi Yulida, "The Role of Qanun and Reusam in Handling Children in Conflict with the Law in Aceh", *Kertha Wicaksana Journal: A Means of Communication between Lecturers and Students* 19, No. 1 (2025): 74.

²¹Article 3 of Qanun Number 11 of 2008 concerning Child Protection.

²²Article 39 Paragraphs 1, 2 and 3 of Aceh Qanun Number 11 of 2008 concerning Child Protection.

²³Article 40 Paragraphs 1, 2, 3 and 4 of Aceh Qanun Number 11 of 2008 concerning Child Protection.

²⁴Article 41 Paragraphs 1 and 2 of Aceh Qanun Number 11 of 2008 concerning Child Protection.

juvenile justice mechanism contains the objectives of protection, individual development and restorative. The objectives of protection and development can be seen in Article 67 paragraph (2) especially in the phrase 'placed provided by the Aceh Government'. Meanwhile, the restorative objective can also be seen in Article 67 paragraph (2), especially in the phrase 'returned to parents/guardians'.

Child protection aims to ensure that children's rights to live, grow, develop and participate optimally in accordance with human dignity and honor are fulfilled, and that they receive protection from exploitation, violence and discrimination, in order to realize children who are of good quality, have noble character and are prosperous.

The purpose of imposing sanctions on children is to provide a sense of responsibility for children, not to punish or provide a deterrent effect. Therefore, sanctions must be educational, appropriate to the age and type of violation, not burden the child psychologically, prioritize the child's best interests, focus on prevention without calling the child a perpetrator of the crime, and pay attention to justice, both for children as victims and perpetrators. So that in the case of children, alternative solutions are sought restorative *justice through* diversion. Where children's cases can be resolved through customary methods in the Nanggroe Aceh Darussalam (NAD) region, rather than taking legal action in court. Because sanctions in customary institutions are considered more flexible than punishment in court, they can protect the best interests of the child himself.

4.2. SUGGESTION

The need for more attention and guidance from parents so that they can monitor and know the actions and behaviors related to Children in Conflict with the Law, by better understanding the causes and consequences of the actions committed by children, so that the same bad actions are not repeated. And the need to create more specific regulations governing every criminal act committed by children, in order to create a more comprehensive policy in child protection.

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