

LIABILITY FOR PLAYERS THAT SEND CHILDREN AS BEGGARS OF LAW POSITIVE PERSPECTIVE INDONESIA

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ABSTRACT

Discussion of legal accountability for the perpetrators who ordered the child to begging. Command having the child do the begging, in addition to appearing from the child's parents can also arise from certain parties who do the begging children in coordination. These problems are factors causing exploitation of children for begging and sanctions given to the perpetrators who send children into beggars.

The cause of child exploitation to be used as a criminal is Internal and external factors. Internal factors is more directed to the family circumstances of factors which illustrated a state in individuals and families of children who are exploited for begging that encourages them to do the begging activities. These factors are the poverty of individuals and families, age, formal education, parental permission, low skills and mental attitude. External factors are environmental factors that surround or around the elderly beggar both in the area of origin or destination. Criminal law policy against offenders who send children as beggars can be categorized as a criminal so that the perpetrators are liable to imprisonment or a fine or both at once. Imprisonment is a maximum of ten (10) years, while the maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). Criminal accountability for perpetrators who are falling child beggars are the acts as stipulated in the provisions of Article 301 of the Criminal Code and Article 76 I and Article 88 of Law No. 35 of 2014 on the Amendment of Act No. 23 of 2002 on Protection of Children set about telling children do the begging is a criminal offense and the perpetrator may be subject to criminal sanctions.

Keywords : Liability and Law Positive Persfektive.

PRELIMINARY

Discussion about begging, children are associated with the implementation of child protection is raised resulting in some specific causes begging for their children to do certain parties (adults) who ordered and condition the child to do a good begging. Command having the child do the begging, in addition to appearing from the child's parents can also arise from certain parties who do the begging children in coordination.

Apart from the aspect of who sent the child to begging the law in Indonesia, particularly the Criminal Code and related laws such as the Law No. 21 of 2007 on the Eradication of Trafficking in Persons and the Act No. 23 of 2002 on Child Protection threatening parties that having the child actors do begging punishable.

Although Indonesia is such that the protection of children, especially in relation to begging in various law even such protection is fundamentally also stipulated in the 1945 Constitution Article 34, which reads "The poor and children displaced maintained by the State", but the reality of state and government has not been able to do anything in relation to the maintenance and guarantee of children and the poor in the manner intended by the 1945 Constitution tersebut. Thus begging, children and even the perpetrators who ordered the child to begging. This proved easily viewable child begging, either independently or with an adult in almost every corner of the city.

This reality is a bitter pill for Indonesia, where officials often spoke for the welfare of the people, even at certain moments such as elections and the parliamentary elections, Parliament, the presidential election, but solving the problems of children begging, they can't afford.

Is a very risky thing if a majority of the nation who are young should be fostered on the streets with mental beggars. Indonesia then we can say the future will be filled with corrupt mentalities, beggars and uneducated.

FORMULATION OF THE PROBLEM

- a. What factors cause children exploited for begging?
- b. How sanction given to offenders who send children into beggars?
- c. How to cope and provide solutions to the beggar children in Indonesia?

LITERATURE REVIEW

Definition of Beggars.

Subject beggar is regulated in Government Regulation No. 31 of 1980 on Combating Homeless and Beggars. PP is rising as the implementing regulations of Law No. 6 of 1974 on the Basic Provisions of Social Welfare was replaced by Act No. 11 Year 2009 on Social Welfare.

Definition of beggars found in Article paragraph (2) PP 31, 1980 determined: Beggars are people who earn their living by begging in public in various ways and reasons to expect mercy from others.

Indonesian dictionary said was the beggars who beg. While bum in the same dictionary is a person who has no fixed abode, who wanders, people who do not tetntu residence and work.

Both of the above sources can be understood the fact that the reference to the term beggars more emphasis on understanding to meet its revenue through begging, while the more bums defined as not having a place to stay temporarily or permanently, so that life from one place to another.

Hilman Hadikusuma said means begging begging for alms, asking for mercy. Beggars means people who ask for alms.

According to the Criminal Code act of begging in public, threatened with a maximum confinement of six weeks. While begging committed by three or more persons, whose age is over sixteen years, is punishable by a maximum confinement of three months (Article 504 of the Criminal Code).

It seems a matter of begging in the State of Indonesia is still difficult to eradicate because Indonesia maish countries categorized as developing countries where the average population below the poverty line and have low education.

Definition of the Child

Definition of a child is closely connected with the notion of maturity. Definition of a child in the positive law of Indonesia there are differences in the determination of maturity that lies in the difference benchmarks under the terms of the written law, among others:

1. The Convention on the Rights of the Child 1989

Part I Article 1 of the CRC provides that the child in question is: "any person under the age of 18 years unless under the law applicable to the child that the child's age of majority is attained earlier."

2. The Book of the Law of Civil Law (Civil Code).

Article 330 of the Civil Code provides an age limit between minors with adult ie 21 years, with the exception if the children are married before the age of 21 years, and with the maturation process outlined in Article 419 of the Civil Code.

3. Law No. 23 of 2002 on Child Protection

Article 1 paragraph 1 of Law No. 23 of 2002 explained that the child is "a person who is not 18 years old, including children who are still in the womb."

4. Law No. 1 of 1974 on Marriage.

Article 47 paragraph (1) of Law No. 1 of 1974 stipulates that a child who has not reached the age of 18 or have never been married, is under the authority of their parents.

5. Law No. 1 of 2000 on the Ratification of ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child.

Article 1 of Law No. 1 of 2000 specifies that a child means: "all persons aged under 18 years" (in accordance with Article 2 of ILO Convention No. 182).

6. Law No. 4 of 1979 on Child Welfare.

Article 1 paragraph 2 of Law No. 4 of 1979 provides that: "The child is a person who has not attained the age of 21 (twenty-one) years and have never been married."

7. Customary Law (Customary Law and Islamic Law).

a. Civil Law West Java (research of R. Supomo) states that the size of maturity based on certain real characteristics, namely: can work alone (standalone), able to do what is required in the life of society and responsible, able to take care of his wealth ,

b. Compilation of Islamic Law also specifies the maturity based since signs of bodily changes, for both men and women. So, that is used to determine the maturity age limit for children is to see the problem first. The age limit in terms of the general maturity is 18 years, with the basic principle of the law of *lex specialis* (special law which beat the common law). The exception in the case of marriages that minimum age to marry is 19 years for men and for women is

16 years. Children who have not attained the age of 18 years under the authority of their parents as long as they are not deprived of its power, the parents who represent the child in terms of legal acts inside and outside the courthouse

In addition, the child is entitled to maintenance and protection of both while still in his mother's womb or after birth, so that when the interests of the child requires the child in the womb of a female nature is considered as having been born. While the children who died at birth considered to never have existed.

R. Soetojo Prawirohamidjojo and marthalena Pohan in J. Satrio explained that everyone has "the authority has the right" because he is the subject of law. However, not everyone is qualified to take legal acts. In general, orang so-called adult (meerderjarig) can perform legal acts lawfully, except if the law does not specifically say so. Article 2 (1) of the Civil Code stipulates that "the child is in the womb of a woman deemed to have been born, if the interests of the child require it".

DISCUSSION

Causes Children exploited for begging

The main factors that the homeless and beggars is poverty. This factor is very essential in terms referring to the social imbalances, particularly inequality in the fulfillment of the individual's life. So that the poor are not able to enjoy the most minimal social welfare though.

The poor, is a part of the community vulnerable. Poverty is typically described as a lack of income to meet the most basic necessities of life, such as food, clothing and housing.

Poverty is a condition in which there is a lack of income (insufficiency of income) and / or the state of the unavailability of access (lack of access) of goods and services for certain basic needs for families or individuals who need them. Actually, the notion of poverty is a symptom of a more complex and includes many aspects not just a lack of income alone.

In the city of Medan, especially as the capital of North Sumatra province factors that become the cause of children exploited for begging are less available jobs in rural

areas, due to a faster rate of economic growth increased in the city than in the village, as well as the reduction of agricultural land due to population undertakings plantation of wide scope, as well as their sense of interest in trying to live in the city without the same HR (Human Resources) was good, just try or part of it.

Along with the above description can be read in the writings of Gede Sedana at one of the sites on the internet explaining about the causes of children being exploited for begging. The factors are:

1. Internal Factors

Internal factors is more directed to the family circumstances of factors which illustrated a state in individuals and families of children who are exploited for begging that encourages them to do the begging activities. These factors are briefly described below.

a. Individual and Family Poverty

Inability to meet the need that the longer these needs will be increased to encourage someone to do anything as long as he can make ends meet and their families. In fact they should be risked for the sake of self-esteem and family make ends meet by having the child do the begging.

Poverty individuals including one of the factors that determine the occurrence of begging activities, including having children do begging. The limited tenure exacerbated by conditions of barren land, and a critical lack of availability of water, except during the rainy season resulted in they can not cultivate their land throughout the year. Therefore, during the dry season to earn a beggar and his family into town just to meet the most basic needs, ie food needs.

b. Age

It turned out that the factors of age provides significant influence, where the majority of beggars encountered is old and very young, less than 13 years old or still a child. Factors young age provides an opportunity for them to engage in begging for lack of thinking about the shame is too strong. Even those (children) looks cheerfully running around and joking with his friend when menggepeng. This condition is very different or inversely proportional to those who have adolescent because we already know the term embarrassment. This condition indicates that

men who had grown already feel they can no longer be a beggar because of embarrassment.

Meanwhile, obtained a state that begging is done by children seem to provide a greater opportunity to obtain the mercy of the city's population. The condition is very reasonable, if examined more where they would have several advantages, among which are as follows: prospective money will be sorry to see a mother with a small child he was carrying or children who engage in begging, the money earned will be more, in addition to sometimes they are also given food, especially for children who do the begging.

c. Formal Education

At the age level that is still categorized children, should they have followed formal education activities in schools. However, they chose to be a beggar than to school because they do not have the financial capacity to the needs of the school as a result of the poverty of parents. Not berpendidikannya beggars cause they do not acquire knowledge or understanding of morality, religion and other sciences that could inspire their hearts to not engage in activities as a beggar.

d. Permission Parents

All the children who beg activities basically have to get permission from their parents and even told by his parents. The above reasons also justified given the socio-economic condition of parents of children who have become beggars classified as very poor. So that in a situation they had to let her son and told his son to join to seek income to help meet the needs of the household.

e. Low Skills

Low skills so that parents do not have the skills needed by the world of work requires them to send the child to begging. While they are classified as relatively older age and female sex since his youth has never received vocational education in the village. Therefore, activity vagrancy and begging is the easiest option to implement in order to earn money easily. But according to them, begging it sometimes quite difficult to earn money because they have to drive around and try and try to beg, where not all prospective direct charitable giving, and even ignore it.

f. Mental Attitude

This condition occurs because in the minds of parents who send children do begging emerging trend that the work he does is something mediocre, should other work that aims to earn income. The absence of other sources of income and limited mastery of productive infrastructure and facilities, as well as the cause of their limited skills make begging as a job. Or in other words, they say also that there is no other way than to beg to earn income to meet their needs.

In addition, a lazy mental attitude is also driven by the lack of control by other citizens or the appearance of a permissive to vagrancy and begging activities conducted by residents and asked the child to begging because of their economic circumstances were very limited. While on the other hand, it does not own the right solution in the short term for those who become beggars. Such situation is also slightly raises and maintain their culture of begging that happened.

2. External Factors / Environment

Become beggars can be caused by environmental factors that support it. It is like a child begging, conducted in the month of Ramadan, this moment to use them to find money to help their parents earn a living.

External factors are environmental factors that are intended are several factors that are around or about the elderly beggar both in the area of origin or destination.

a. Geographical location

The area is not expected to make the natural potential of people living in those areas experiencing poverty. Living area is the location of rice fields whose crops do not produce enough income to make ends meet. Less fertile soil and also have no more land to grow crops, create must leave the place to look for another fortune. However, the decision to relocate further exacerbating the situation. The absence of natural potential ready to be processed to make beggars are increasingly entering the poverty line, and make it a burden. Neighborhoods that are densely populated areas that vacant land is not there anymore. limited natural resources makes knowl family, is have to think hard about how to stay alive in a poor state. therefore beggars prefer to be beggars

so that their needs little terpeuhi with the money from begging. One of the causes of poverty is the lack of natural resources, which are referred to as poor natural.

b. Weak Workaround Beggars

Handling problems beggars undertaken by the government is only half-hearted. During this treatment had real do is raid, rehabilitation in a rehabilitation center, then afterwards returned to the place of origin. In kenyataannnya, this treatment is not deterrent for them so that one day they will come back again into beggars. in the process of handling things done was after they raided brought social kepanti to get built, for the sick and the frail old will remain in social institutions, while others will be repatriated. This process is considered too easy and tasty for a beggar so that he need not fear when netted again. this is what makes them continue to repeat the same activities that become beggars.

Penalties Given To The Performers The Telling Children Become Beggars

Needs of the need for legal protection for children includes several aspects, namely: protection of the rights and freedoms of children, child protection in the judicial process, protection of the welfare of children (in the family environment, education and social environment), the protection of children in matters of detention and deprivation independence, protection of children from all forms of exploitation (slavery, child trafficking, prostitution, pornography, trafficking / drug abuse, manipulate children into committing crimes etc.), protection of street children, child protection from the consequences of war / conflict armed, protection of children against violence.

Based on the above, the perpetrators of which send children into beggars should be given criminal sanctions for positive law in Indonesia either the Criminal Code in Article 301 of the Criminal Code and Article 76 I and Article 88 of Law No. 35 of 2014 on the Amendment of the Law number 23 of 2002 on the Protection of children set about having the child do the begging is a criminal offense and the perpetrator may be subject to criminal sanctions.

In connection with the actions of exploiting children to become beggars, then if the note several aspects of the scope of child protection as described above, then the

act of exploiting children to become beggars is an act that ignores the protection of children from all forms of exploitation. Everyone is prohibited exploitation of children in any form as stipulated in Article 301 of the Criminal Code Article 76 juncto Article I and Article 88 of Law No. 35 of 2014 on the Amendment of Act No. 23 of 2002 regarding Child Protection.

Article 301 of the Criminal Code reads:

Whoever gives or handed over to another person a child who is under kekuasaannya legitimate and which generally have less than twelve years, since it is known that the child was going to be used for or in time do begging or for work that is dangerous, or that can damage health shall be punishable by a maximum imprisonment of four years."

Section 76 I of Law No. 35 of 2014 on the Amendment of Act No. 23 of 2002 on Protection of Children reads: "Every person is prohibited to place, let, do, told to do, or participate in the exploitation of economically and / or sexually Child".

Article 88 of Law No. 35 of 2014 on the Amendment of Act No. 23 of 2002 on Protection of Children reads: "Any person who violates the provisions referred to in Article 76I, shall be punished with imprisonment of ten (10) years and / or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). "

Based on the above it can be said that the sanctions given to the perpetrators who send children become beggars then sent to the party liable to imprisonment or a fine or both at once. Imprisonment is a maximum of ten (10) years, while the maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).

CONCLUSION

1. The cause of exploitation of children for begging is the internal factors. Internal factors is more directed to the family circumstances of factors which illustrated a state in individuals and families of children who are exploited for begging that encourages them to do the begging activities. These factors are the poverty of individuals and families, age, formal education, parental permission, low skills and mental attitude. Another factor is the external factors / environment meant that

environmental factors are some of the factors that surround or around the elderly beggar both in the area of origin or destination. These factors include: geographical location, and poor handling of the problem of beggars.

2. Penalties are given to offenders who send children become beggars then send it to the parties who are liable to imprisonment or a fine or both at once. Imprisonment is a maximum of ten (10) years, while the maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).

WAYS AND COUNTERMEASURES SOLUTIONS BEGGARS CHILDREN

1. Governments should improve and provide jobs and expand so that the people of Indonesia in spite of poverty.
2. Governments have to provide guidance to the beggar through the Ministry of Social Affairs in the form of skills training.
3. The government in this case must supervise beggars in this case the Government of Regency / City and punish those who exploit children as well as the institutions that employ children under age.

SUGGESTIONS

1. That the government should always update the data on child protection by optimizing the partnership / collaboration with the parties concerned with the protection of children and the government create a program that can cope with the protection of children as beggars. The government should also facilitate non-governmental organizations who care about the protection of children, to realize education for street children / neglected.
2. For a government that must be addressed before dealing with the problem of children who have become beggars is a need to first fix the nation's economy. When our economy is better, then the phenomenon of child beggars over time will gradually disappear.

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