



Legal Protection For Juvenile Defendants In Cases Of Gang Assault (A Case Study Of Verdict Number 5/Pid.Sus- Anak/2022/Pn Smr & 10/Pid.Sus-Anak/2023/Pn Bpp)

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Abstract

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Children are the nation's next generation who have an important role in advancing the nation. During a child's growth and development period, many things that occur in children's delinquency result in criminal acts such as beatings. Beatings carried out by children can result in children facing the law. Legal Protection is an activity carried out based on statutory regulations with the aim of protecting the growth and development of children, both physically, mentally and socially. Therefore, law enforcement and appropriate legal handling of children as perpetrators of criminal acts of beatings are needed. Children who are in conflict with the law must obtain their rights to justice and protection as regulated by Law Number 35 of 2014 concerning child protection and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Kata Kunci:

Hukum, Perlindungan, Pengelolaan Dan Lingkungan Hidup

Abstrak

Anak merupakan generasi penerus bangsa yang memiliki peran penting dalam memajukan bangsa. Pada masa tumbuh kembang anak banyak sekali hal-hal yang terjadi dalam kenakalan anak yang mengakibatkan terjadinya tindak pidana seperti penggeroyokan. Pengeroyokan yang dilakukan oleh anak dapat mengakibatkan anak berhadapan dengan hukum. Perlindungan Hukum adalah kegiatan yang dilaksanakan berdasarkan peraturan perundang-undangan

betujuan melindungi pertumbuhan dan perkembangan anak baik fisik, mental, dan sosial anak. Oleh karena itu, diperlukan penegakan hukum serta penanganan hukum yang tepat terhadap anak sebagai pelaku tindak pidana pengeroyokan Anak yang berhadapan dengan hukum harus mendapatkan haknya untuk mendapatkan keadilan dan perlindungan yang diatur Undang-Undang Nomor 35 Tahun 2014 tentang perlindungan anak dan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak.

INTRODUCTION

Criminal acts refer to behaviors of individuals that violate the regulations and legal norms prevailing in society. In principle, criminal acts can be committed by anyone, including men, women, adults, and children. Children, who are still in the developmental phase and are shaping their identities, tend to be easily influenced by their surrounding environment (Prakoso, 2016). The existence of criminal acts committed by children is a phenomenon that is difficult to eliminate from society. In an increasingly advancing era of globalization, changes can occur within individuals, including children. Attitudinal changes in children can affect their socialization with the community as well as with peers. Attitudinal changes in children can result in delinquent behaviors, such as student brawls, sexual harassment, bullying, theft, murder, and even gang assaults (Mulyadi, 2019)

Assault is a physical attack carried out by a group of people against one or more victims. In this context, the perpetrators collaborate to collectively attack, beat, or injure the victim. Assault can occur in various situations, ranging from the streets to within the school environment (Trofi, 2012). Assault generally occurs due to reasons such as revenge, defamation, feelings of being aggrieved, or conflicts arising from differences in opinions. Thus, the occurrence of uncontrollable emotions in children can trigger criminal acts (Zulfikar, 2023) This is caused by the lack of attention, guidance, attitude development, behavior, and supervision provided by parents (Prakoso, 2016).

The Law Number 11 of 2012 concerning the Juvenile Justice System provides protection for children involved in legal conflicts. The purpose of this protection is to ensure that children obtain their rights differently from adults during every legal process, by providing physical security and protecting them from threats that may come from various parties. Law enforcement authorities are responsible for implementing and providing this protection during each stage of the judicial examination (Rahardjo, 2012) The Republic of Indonesia Law

Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection aims to guarantee the protection and rights of children, ensuring that they can grow, develop, and participate optimally in accordance with humanitarian values. In the context of the crime of gang assault, the author argues that children, both as perpetrators and victims, are sometimes driven by feelings of betrayal, being aggrieved, or feeling their dignity is insulted, leading to gang assaults. Therefore, the importance of legal protection for children involved in such violations is emphasized, considering legal principles and providing leniency according to humanitarian interests and their role as the nation's future generation.

There is a comparison in the verdicts of juvenile defendants in the crime of gang assault, as recorded in Verdict Number 5/Pid.Sus-Anak/2022/PN Smr against Child A, who is 16 years old. The child committed the crime of gang assault openly using violence resulting in injuries with bare hands and damaging property. In Verdict Number 5/Pid.Sus-Anak/2022/PN, the child's name was not masked. However, in 10/Pid.Sus-Anak/2023/Pn Bpp against Child B, the child committed the crime of gang assault openly using violence resulting in injuries with bare hands, using a helmet and bare hands during the assault, and being intoxicated at the time of the assault. In the judge's considerations, the judge took into account the legal facts regulated according to Article 170 paragraph 2 of the Criminal Code in conjunction with Article 170 paragraph 1. When imposing punishment on Child A and Child B, the judge also considered factors that could aggravate and mitigate their actions.

RESEARCH METHODS

The object of this research is the main issue to be investigated to obtain more directed data. The object to be studied is court verdicts related to the crime of gang assault committed by juveniles, with a focus on the protection of defendants in court verdicts. In verdicts 5/Pid.Sus-Anak/2022/PN Smr and 10/Pid.Sus-Anak/2023/PN Bpp, to examine this object, the method will involve analyzing the content of the judge's considerations. This research utilizes a normative literature review method and employs legal statutes (statute approach), case analysis (case approach), and conceptual analysis (conceptual approach). (Nasution, 2008)

RESULTS AND DISCUSSION

Legal Protection for Juvenile Defendants in Verdict Number 5/Pid.Sus-Anak/2022/Pn Smr & 10/Pid.Sus-Anak/2023/Pn Bpp.

Legal protection entails upholding the rights of every individual and ensuring fair and equal treatment under the law (Suhasril, 2016) Children involved in legal issues emerge from various social conditions, including victimization and criminal activities. Hence, there is a need for specific support across various domains, including family, society, and the nation, to facilitate the child's development according to their needs (Idris, 2023) Legal protection for children is crucial for all involved parties, including parents, the government, and society.

The subject in this case is the accused child in Decision Number 5/Pid.Sus-Anak/2022/Pn Smr & 10/Pid.Sus-Anak/2023/Pn Bpp, hereinafter referred to as Decision 1 and Decision 2, respectively. The accused child is further referred to as Child A in Decision Number 5/Pid.Sus-Anak/2022/Pn Smr, who committed the crime of assault, and the accused child in Decision Number 10/Pid.Sus-Anak/2023/Pn Bpp, referred to as Child B, who committed the crime of assault. In this study, it is found that a similar and equitable legal process in fulfilling or legal enforcement efforts to realize legal protection, to describe the reality of the verdict against the accused child can be seen in formulation 1.1 as follows;

1. The legal basis used in Decision 1 is Article 170 paragraph (2) sub-paragraph 1 of the Indonesian Criminal Code (KUHP), and in Decision 2, the legal basis is Article 170 paragraph (1) of the Indonesian Criminal Code (KUHP).
2. Regarding Accused Child A, the Public Prosecutor (JPU) demanded a rehabilitation sentence of 5 months in Samarinda Juvenile Correctional Facility (LPKS Samarinda). As for Accused Child B, the Public Prosecutor (JPU) demanded a prison sentence of 1 year, reduced by the interim detention period.
3. In the Judge's Decision, Accused Child A was sentenced to 3 months of rehabilitation at LPKS Samarinda, while Accused Child B received a prison sentence of 8 months and 2 months of work training at the Balikpapan City Social Service Office.
4. The judge considered that Accused Child A and B were proven to have committed violence against people or property collectively and deliberately, resulting in injuries. Therefore, the judge deemed both capable of being held accountable for their actions as all elements have been fulfilled.

Based on the formulation above, a distinct difference in the verdicts between Decision 1 and Decision 2 towards the accused child can be summarized as follows:

1. Regarding Accused Child A and Accused Child B, with the same legal basis, which is Article 170 of the Indonesian Criminal Code, the demands in Decision 1 and Decision 2 differ.

2. In the case of Accused Child A, the judge considered actions that made the victim witness injured as mitigating circumstances, while behaving responsibly, showing remorse, and seeking reconciliation and peace with the victim were taken into account as mitigating factors. As for Accused Child B, the judge considered that the actions caused distress to the community and harmed the victim as aggravating circumstances. On the other hand, mitigating circumstances include the accused never being previously sentenced, genuine remorse, and a promise not to repeat the offense.
3. In the legal facts in Decision 1 and the mitigating and aggravating factors in the verdict have been in accordance with the Indonesian Criminal Code (KUHP) and Law Number 11 of 2012 concerning the Juvenile Justice System.
4. There are several oversights in the verdict that should not exist / be disguised / eliminated. In the first verdict, the identity of Child A was not disguised, even though Article 19 of Law Number 11 of 2012 concerning the Juvenile Justice System mandates that the identity of children must be kept confidential in media, both print and electronic (Dulfitama Astesa, 2021) This violates regulations related to publication, which can harm the rights of children and have negative impacts on their mental, psychological, and social development.

According to the writer, the sentences imposed by the judge were lighter compared to the demands of the Public Prosecutor (JPU). In Decision 1, a rehabilitation sentence for 3 months was lighter than the JPU's demand for 5 months. Meanwhile, in Decision 2, a prison sentence of 8 months and 2 months of work training was lighter than the JPU's demand for a 1-year prison term. These differences may be due to the judge's different considerations from those of the JPU. Additionally, the judge rendered different decisions for Accused Child A and Accused Child B due to different legal considerations and other factors. Factors such as trial facts also influenced the decision-making process, with mitigating and aggravating circumstances taken into account. For example, Accused Child A was acknowledged for his remorse and admission of guilt, which served as mitigating factors. Meanwhile, in Decision 2, Accused Child B's admission of guilt was also considered a mitigating factor.

Legal protection for accused children constitutes a form of protection that requires special and extraordinary processes based on Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. In this situation, the law functions to safeguard human interests in implementing child protection with due diligence. According to Gustav Radbruch, the law must embody three values, namely as follows:

1. Utility of Law
2. Legal Certainty
3. Legal Justice (Sulardi, 2015)

The principle of legal utility serves as a companion principle to the principles of justice and legal certainty. When implementing the principles of legal certainty and justice, it is advisable to also consider the principle of legal utility.

In Islam, legal justice reflects that legal norms focusing on justice originate from mature reasoning and contribute to virtue in accordance with Allah's laws. Justice is considered a significant norm but deemed insufficient in human relations, thus requiring supplementation with higher norms and forms of relationships (Ayu, 2022). Analyzed from the perspective of legal certainty theory, legal certainty is interpreted as efforts to ensure that laws or regulations are implemented according to the intended purpose by the legislator. All parties are expected to comply with the law in concrete societal contexts. Regardless of its content, laws must be valid, so fundamentally they must not be violated, even if the world conditions become unstable; legal principles must still be enforced (Hazra, 2019). In the case of juvenile delinquency, certain considerations must be observed in enforcing child protection, thus providing an overview of child protection in Decision Number 5/Pid.Sus-Anak/2022/Pn Smr & 10/Pid.Sus-Anak/2023/Pn Bpp as follows:

1. Children are protected by special laws regarding children, as evidenced by the legal basis for Decision Number 5/Pid.Sus-Anak/2022/PN Smr, which is Article 170 paragraph (2) sub-paragraph 1 of the Indonesian Criminal Code (KUHP), and the legal basis for Decision Number 10/Pid.Sus-Anak/2023/PN Bpp is Article 170 paragraph (1) of the Indonesian Criminal Code (KUHP).
2. Legal Enforcement Process

In Decision 1, the chronology is as follows: The accused child and his friends, while intoxicated, recklessly rode a motorcycle in the middle of the road, blocking the victim's path. When the victim asked for the reason, the accused child and his friends became angry and initiated an assault. The accused child struck the victim with bare hands, causing bruises and swelling on the left cheek and the back of the head. They also damaged the victim's motorcycle by kicking and hitting it, resulting in damage to the left side of the body, broken headlights, and scratches on the handlebars.

In the legal enforcement process in Decision 1, the accused child was detained in the detention center by the investigators for 7 days from April 18, 2022, to April 24, 2022, with an

extension by the public prosecutor for 8 days from April 25, 2022, to May 2, 2022. The investigation continued from May 3, with the public prosecutor from May 30, 2022, to June 3, 2022, with the first extension by the Chief Judge from June 3, 2022, to June 7, 2022, and the judges of the District Court from June 3, 2022, to June 12, 2022, with the first extension by the Chief Judge from June 12, 2022, to June 27, 2022. The child was accompanied by a Legal Counsel and their parents during the trial.

In Decision 2, the accused child and his friends used violence against the victim. The accused received information about the victim's plan to assault his friends, so the accused and his friends approached the victim. The victim came forward to report, but the accused immediately struck the victim three times. After that, the accused struck the victim's witness with a helmet once on the head. As a result, the victim's witness experienced pain in the lower part of the left eye socket, cheek, nose, and lips, as well as numbness.

Legal enforcement process in Decision 2: In Decision 2, the accused child was held in detention at the detention house. The investigators were not detained, and the public prosecutor for 5 days from June 8, 2023, to June 12, 2023. The judges of the District Court of Balikpapan for 10 days from June 9, 2023, to June 18, 2023, extended by the Chief Judge of the District Court of Balikpapan until July 3, 2023. The accused child was accompanied by a legal counsel during the trial.

The legal enforcement process results in legal protection:

1. Arrest and Detention

During the arrest, the police are required to inform the suspect, their parents, guardian, or custodian. A detained child may only be held for a maximum of 24 hours in a child service room or Juvenile Correctional Facility (LPKS). Detention after arrest should ideally be separate from adult detainees to protect the child from unforeseen risks (Rossiana, 2012) During the investigation, according to Article 32 of the Criminal Procedure Law, detention is limited to a maximum of 7 days and can be extended up to 8 days by the prosecutor.

2. Investigation

Special child investigators, based on the decision of the Chief of the Indonesian National Police or designated agencies, must possess qualifications including experience, high interest, focus, understanding of children, and technical training. They handle cases involving minors, with a maximum of 7 days for diversion efforts according to Article 29 of the Criminal Procedure Law. During the investigation

process, investigators conduct interviews patiently, record findings about the case, background, and causes of delinquency.

3. Prosecution

The prosecution of child cases is carried out by the public prosecutor based on the Decision of the Attorney General or through other officials appointed by the Attorney General. According to Article 42 of the Criminal Procedure Law, the Public Prosecutor must make diversion efforts no later than 7 (seven) days after receiving the case files from the investigator.

4. Trial

During the trial, the proceedings are conducted in a closed manner. The Single Judge, Public Prosecutor, and Legal Counsel do not wear robes during the trial. During the examination of witnesses, the accused child will be taken out of the courtroom upon the judge's order, and during the trial, the child is accompanied by a legal counsel, a social worker, and parents who have obtained permission. The judge must endeavor diversion no later than 7 (seven) days after being determined by the chairman of the district court as the judge.

5. Rehabilitation

Special Child Rehabilitation Institutions (LPKA) are places of detention for children serving prison sentences. Children are entitled to receive guidance, supervision, and training in accordance with legal regulations, including the right to guidance, education, and training. With adherence to legal regulations, LPKA is obliged to provide education and training, rehabilitation, as well as fulfill other rights accordingly.

In my opinion, the accused child of assault is entitled to protection from violence and discrimination to ensure legal certainty. Every child has the right to protection from abuse and inhumane punishment. The juvenile justice system is needed to address children facing the law, ensuring the rights and obligations of children are carried out fairly and humanely. According to Article 64 paragraph 2 of the Child Protection Law, children facing the law have the right to receive special protection from the government, state institutions, and society.

Legal Protection for Child Defendants in Decision No. 5/Pid.Sus-Anak/2022/PN Smr and 10/Pid.SusAnak/2023/PN Bpp

Legal protection is an action taken to safeguard the rights of every individual to ensure fair treatment and equality in the eyes of the law (Surhasil, 2016) Children involved in legal

issues arise from various social conditions. Legal protection is crucial for all parties involved, including parents, government, and society (Idris, 2023). Additionally, the state and government have significant roles in such protection. Article 20 of Law Number 35 of 2009 states: "The state, government, society, family, and parents have an obligation and responsibility to carry out and protect children." The purpose of providing legal protection for children facing legal issues is a form of respect for human rights to ensure freedom, legal certainty for children facing legal issues, and to avoid prosecution, actions, or abuses that do not promote justice.

During the legal process, there were differences as well as similarities in Decision 1 and Decision 2. Therefore, a comparison is made between Decision 1 and Decision 2 as follows:

- a. Accused Child A was detained in the detention center by the investigators, public prosecutor, and judge. Accused Child B was detained in a detention center conducted by the investigators, public prosecutor, and judge.
- b. In the arrest of Accused Child A and Accused Child B, lawful arrests were conducted, and there was no coercion.
- c. During the investigation conducted on Accused Child A and B, the method of investigation was not explained in the verdict, and during the investigation, Accused Child was accompanied by a legal counsel.
- d. During the trial, Accused Child A underwent rehabilitation at LPSK and remained detained, while Accused Child B remained detained in the detention center, and Accused Child B also received work training. However, the identity of Accused Child A was not disguised.

In my opinion, the accused child in the assault case must receive legal protection according to Law Number 11 of 2012 concerning juvenile justice, involving the entire legal process. During the investigation, investigators must communicate with the child using language that is easy to understand, without intimidating or coercing them into providing information that could cause trauma. The accused child has the right to legal assistance and to choose their own legal counsel, ensuring their understanding of legal matters. Swift examination by investigators is necessary to ensure clarity of fate, especially if there is detention, which should be conducted in a special room for children to make them feel comfortable and not afraid.

In the verdict, it is not clear whether Child A and Child B were detained together with adult detainees. According to Article 30 paragraph (2) of Law Number 11 of 2012, the

detention of children must be placed in a special child service room. Investigators must be careful, especially because these children are still in school and this constitutes their first criminal act. If possible, oral warnings or statements not to repeat the criminal act can be given, especially when dealing with the police.

CONCLUSION

Legal protection for children against non-criminal acts by children is provided through existing legislation aimed at protecting minors involved in criminal acts, as covered by Law No. 11 of 2012 concerning the Juvenile Justice System. This law outlines procedures for providing legal protection to underage children who commit offenses. Children are afforded formal protection at every level of the juvenile justice system, starting with the stages of apprehension, arrest, investigation, prosecution, trial stage, and rehabilitation period. Decision 1 with Case Number 5/Pid.Sus-Anak/2022/Pn Smr indicates that the initial procedure carried out complies with Law No. 11 of 2012, beginning with treating the child according to their age and obtaining legal assistance. However, the decision reveals the child's name without being anonymized, which violates the child's rights, and disclosing the child's identity will undoubtedly impact the child's mental, psychological, and social development. Decision 2 with Case Number 10/Pid.Sus- Anak/2023/Pn Bpp shows that the procedure followed complies with Law No. 11 of 2012. However, the sentence issued by the judge is considered inappropriate, with imprisonment for 8 (eight) months and respective work training for 2 (two) months each, considering the child's age is still under 18 years old and still attending school. An 8-month imprisonment may cause psychological harm to the child during detention, where instead the child should receive protection from the juvenile justice system. To avoid undesirable outcomes, there needs to be protection for children facing the law, with penalties that respect children's rights and humanity.

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