

**Legal Protection of Child Perpetrators in Child Violence Crimes
Which Resulted in Death
(Case Study of Judgment Number: 9/PID. SUS-Child//2020/PT
DKI Jo.
Decision Number: 12/PID. SUS-Children/2020/PN JKT. PST)**

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Abstract. The 1945 Constitution embodies the basic rights that every individual must enjoy, legal certainty is the essence of law itself. The legal system must realize three basic values: justice (philosophical aspect), certainty (juridical aspect), and usefulness (sociological aspect). The application of Diversion in the Juvenile Justice System can only be carried out against children if the child commits a criminal offense punishable by imprisonment of less than 7 (seven) years and is not a repeat offender. The research used normative juridical method with empirical juridical approach, the research used secondary data in the form of primary, secondary and tertiary legal materials. The results showed that Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. The form of legal protection regardless of his actions that violate the law. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System pays attention to the conditions and motives of the perpetrator at the time of committing the crime. Decision Number: 9/PID.SUS-Anak//2020/PT.DKI. Decision Number: 12/PID.SUS-Anak/2020/PN JKT.PST. Juridical considerations of judges for criminal acts of violence resulting in the death of children and children as perpetrators of sentencing of children prioritize the principle of the best interests of the child and the rights of the child, as specified in Article 2 point (d) and Article 3 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The judge considers the interests of the child's family as a victim, holding a sense of justice for the perpetrator and victim. Philosophical considerations, finding the truth, creating justice. Sociological considerations, achieving Restorative Justice through Diversion. Although diversion could not be carried out, the judge made a decision to release the child from punishment. The judge considered the defendant's condition requires social rehabilitation, assistance by social workers, forensic psychologists, caregivers and religious mentors, routine health and pregnancy checks, continuing education, and parents to provide more time for assistance.

Keywords: Legal Protection; Child; Crime of Violence; Death.

Introduction

The juvenile justice system is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after completion of serving the sentence, not only to impose sanctions or deterrent effects on children in conflict with the law, but also to focus on resolation, rehabilitation and social welfare efforts. This is what distinguishes the juvenile criminal justice system from the general criminal justice system. In juvenile criminal justice, the rights of children are emphasized, both children as suspects, defendants, and prisoners. The enforcement of children's rights regulated in the legislation on juvenile criminal justice is a manifestation of child protection.

The application of the principle in Indonesia which has the principle of *lex specialis derogat legi generali*, so that special laws, namely Law Number 11 of 2012 concerning the Criminal Justice System for Children will override the Criminal Code. The Juvenile Justice System regulates the differential treatment of criminal offenders both in the procedural law and the threat of punishment considering the characteristics and characteristics of children and for the protection of children, then cases of children in conflict with the law must be tried in the Juvenile Criminal Court which is in the general judicial environment. From the time of arrest, detention and trial, their guidance must be carried out by special officials who understand children's problems. If the legal process must be carried out on children, it is certainly unfair if child defendants are subject to the same legal process as adult defendants.

The settlement of juvenile criminal cases, not all problems are resolved through formal justice channels, but can also be resolved outside the criminal justice process as an alternative to case settlement, namely with a justice approach in the best interests of the child and by considering justice for victims called the Restorative Justice approach through Diversion. This approach emphasizes efforts to address the root of the problem and the psychological, social and emotional impact that criminal acts have, both on victims, perpetrators and society as a whole.

The enactment of case settlement with a Restorative Justice approach through Diversion, is intended to avoid and keep children away from the judicial process so as to avoid stigma and labels against convicted children in trouble with the law and the child can also return to his social environment reasonably without fear of being harmed by his psychological and social growth in the future. The implementation of the agreement on diversion efforts in the process of enforcing juvenile criminal law involves several elements, the involvement of several elements including, among others, "Children and their parents / guardians or their accompanying, Victims and / or parents / guardians, Community Supervisors, Professional Social Workers, Community Representatives, and other related parties who are considered to be involved in the Diversion deliberations." (Irawati, 2021)

Provisions on diversion are specifically regulated in Article 6 to Article 14 of Law No. 11/2012 on the Juvenile Criminal Justice System; Supreme Court Regulation No. 4/2014 on Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System; and Government Regulation No. 65/2015 on Guidelines for the Implementation of Diversion and Handling of Children Under 12 Years of Age. Diversion can only be carried out against children if the child commits a criminal offense punishable by imprisonment of less than 7 (seven) years and is not a repeat offender. The diversion agreement can only be reached if the child victim and/or the child victim's family are willing and agree to hold mediation and negotiation between the perpetrator of the crime, the victim, the perpetrator's family and the victim, the community directly affected by the crime and involving law enforcement as a neutral party to mediate so that a mutual agreement is formed as compensation for their actions. Furthermore, if the diversion process does not result in an agreement or the diversion agreement is not implemented, the judicial process will continue. If the juvenile proceedings continue, the juvenile may be subject to criminal punishment or action.

An interesting case to be researched through legal writing on Decision Number: 9/PID.SUS-Child/2020/PT DKI jo. Decision Number: 12/PID.SUS-Anak/2020/PN JKT.PST, where in this decision there was a criminal act of child abuse resulting in death committed by a child. This incident was committed by a 14-year-old girl and the victim was also a 5-year-old girl. Initial research based on testimony from the perpetrator, it is known that the act began with the sudden desire of the perpetrator to kill someone, which he had tried to ward off but then became stronger when he saw his younger brother's toy in the bathtub. After seeing the toy, the perpetrator immediately had the thought to kill, who was a friend of the younger brother of the perpetrator. The unfortunate event occurred which resulted in a 5-year-old boy having to lose his life due to violence committed by a 14-year-old child. On the basis of this, the researcher is interested in formulating this problem by linking the existing rules for resolving child criminal acts in Indonesia.

Problem Statement

To find out more deeply about the implementation of the juvenile criminal justice system and the legal protection of children in Indonesia with the following problem formulation restrictions:

1. How is the legal protection of child perpetrators of child abuse that results in death in juvenile criminal law in Indonesia?
2. What are the considerations of the Judge in handing down a verdict against a child in Decision Number: 9/PID.SUS-Child/2020/PT DKI jo. Decision Number: 12/PID.SUS-Anak/2020/PN JKT.PST?

Research Method

The method used in this is descriptive analytical with an approach using an empirical juridical approach method, meaning that the data obtained is guided by juridical aspects, also guided by empirical aspects which are used as tools. Descriptive analytical means describing and painting something into the object of research critically through qualitative analysis within the scope of legal science, then the normative approach, including legal principles, synchronization of laws and regulations, including efforts to find *in concreto* law.

In this study, the legal provisions on juvenile criminal offenses in relation to the legal protection of national children in the application of criminal offenses in the implementation of Diversion in providing legal certainty and justice are presented.

Discussion

Legal Protection of Child Perpetrators of Child Violence Resulting in Death in Indonesian Juvenile Criminal Law.

Law No. 8 of 1981 concerning the Criminal Procedure Code regulates criminal procedural law nationally based on the nation's philosophy of life and the State's basis to protect human rights. (Irawati et al., 2021). Article 1 paragraph (2) of the Child Protection Law states that child protection can be realized if it receives support and responsibility from various parties. The support needed has been regulated in Article 20 of the Child Protection Law where it is stated that the state, government, local government, community, family, and parents or guardians have obligations and have responsibilities for the implementation of child protection. The Indonesian state and government have the obligation and responsibility to respect and guarantee the human rights of every child without discriminating against ethnicity, religion, race, class, gender, ethnicity, culture, language, legal status of the child, birth order of the child, mental and physical condition of the child. In addition, it is also obliged to provide facilities and infrastructure in carrying out child protection. All of this is regulated in Article 21 and Article 22 of the Child Protection Law.

The view of the advocate, Dr. Hendra Wijaya, SH, MH Child crime is a crime committed by minors, whose actions are influenced by association, parental upbringing, the use of technology that is seen and then imitated, and from the surrounding environment. Things like this then there must be clear regulations and arrangements so that all parties want to cooperate so that legal protection for children and children's rights can be achieved.

Article 23 to Article 24 of the Child Protection Law regulates the guarantee of protection, maintenance and welfare of children by taking into account the rights and obligations of parents, guardians, or other people who legally have responsibility for the child. The guarantee provided by the government is child protection supervision. Article 25 states that the role of the community is also important in the implementation of child protection. What is meant by the role of the community is individuals, child protection institutions, social community institutions, non-governmental organizations, educational institutions, religious institutions, business entities and the mass media.

The occurrence of criminal acts against children, both children as perpetrators and children as victims, in this case criminal acts of violence against children, the perpetrators can be charged with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The criminal threats in the article on persecution in the Criminal Code and in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection apply to those who are adults. If the perpetrator of the crime is a child, then the imprisonment that can be imposed on him is at most half of the maximum imprisonment for adults as regulated in Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Furthermore, the regulation of children according to the Juvenile Criminal Justice System Law in Article 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, what is meant by children is divided into several types, namely:

- (1) A Child in Conflict with the Law, hereinafter referred to as a Child is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime.
- (2) A child who is a victim of a criminal act hereinafter referred to as a Child Victim is a child under the age of 18 (eighteen) years who experiences physical, mental, and/or economic losses caused by a criminal act.
- (3) A child who becomes a Criminal Witness hereinafter referred to as a Child Witness is a child under the age of 18 (eighteen) years old who can provide information for the purposes of investigation, prosecution, and examination in court about a criminal case that he hears himself, sees for himself, and/or experiences himself.

Article 1 paragraph (1) of Law Number 23 Year 2002 on Child Protection, defines a child as follows: "A child is someone who is not yet 18 (eighteen) years old, including children still in the womb."

In the Convention on the Rights of the Child, a child is defined as "A child is any human being under the age of 18 (eighteen) years, unless the age of majority is determined to be earlier."

The provisions of the Law are connected with Decision Number: 9/PID.SUS-Anak//2020/PT DKI jo. Decision Number: 12/PID.SUS-Anak/2020/PN JKT.PST, with the perpetrator child as a child, of course his rights as a child must be fulfilled and he must still get legal protection regardless of his actions that violate the law. Therefore, what kind of legal protection does Fitri as a child perpetrator deserve for the crime of violence that resulted in death. Law No. 11/2012 on Juvenile Criminal Justice System does not only look at the act at the time it is committed but also pays attention to the conditions after the act is committed so that it can see the condition and motive of the perpetrator at the time of committing the crime.

The law enforcement process took place and it was found that the perpetrator was pregnant with a 3-month-old baby, and after getting an examination from a psychiatric expert witness, it was found that he had a psychosexual history; a history of aggressiveness behavior and a history of severe psychiatric disorders. Having psychosexual activity that should not be done by a child his age. His aggressive behavior also tends to often hurt animals, and other people physically, often lie to get what he wants and often hurt himself, not to commit suicide but only to feel how it feels to be hurt by being cut with a razor blade. These behaviors are behavioral disorders in children that occur during childhood or known as Conduct Disorder. (Putri Diana & Arista Candra Irawati, 2022)

The impact of the divorce of the two perpetrators has a major effect on mental growth and development. Weak emotional intelligence means that the child tends to think negatively, is easily suspicious, easily provoked and lacks self-confidence so that children like this must be given psychological recovery, because if there is no recovery, the negative things in the child will repeat continuously because their mental condition is destroyed and fragile. If the child commits a serious crime then they can be convicted and placed in the Special Development Institute for Children (LKPA) or in other places where it is required to have 6 professions in it for mental healing, namely having social workers, psychologists, doctors, psychiatrists, teachers, counselors, and experts to hone children's abilities where all these professions are available at LPKA Indonesia or other rehabilitation places equipped with sports facilities and arts facilities.

The legal protection of the State of Indonesia on the fulfillment of the rights of children in conflict with the law on the confidentiality of identity as victims, perpetrators is part of respect, upholding human rights. The Convention on the Rights of the Child, the 1945 Constitution of the Republic of Indonesia guarantees that all citizens are equal before the law and the government must uphold the law and government with no exceptions. Furthermore, Law No. 11/2012 on the Juvenile Criminal Justice System is an effort by the Indonesian state to accommodate several guidelines such as the United Nations, Beijing Rules, and Havana Rules. (Irawati, 2022)

The Child Criminal Justice System Law also adheres to a double track system where there are punishments and measures that can both be chosen and can also be combined. Rehabilitation by prioritizing Restorative Justice and Diversion. Because the requirements for diversion are those that are punishable by imprisonment under 7 (seven) years and are not repeat offenders. And in this case, sentence is under 7 years, so Restorative Justice efforts can be made with diversion. The implementation of the diversion agreement in the process of enforcing juvenile criminal law involves several elements, the involvement of several elements including: "The child and his/her parents/guardian or guardian, the victim and/or his/her parents/guardian, community counselor, professional social worker, community representative, and other related parties who are deemed to be involved in the Diversion deliberation". Restoration of this relationship can be based on mutual agreement between the victim and the perpetrator.

Through an interview between the author and Dr. Hendra Wijaya, SH, MH who certainly has a lot of experience and has handled many cases, he argues that he agrees with the existence of restorative justice and diversion in the juvenile criminal justice system in Indonesia because according to him children are the future of the nation and the protection of children's lives is also a must for the nation to guarantee children's rights to live and develop and this is in accordance with Article 28b paragraph (2) of the Constitution, so if a case can be resolved by diversion or others, it is certainly very good, but this also depends on the crime and the form of punishment of the child offender. The age limit of the perpetrator in accordance with Article 69 paragraph (1) of Law Number 11/2012 concerning the Juvenile Criminal Justice System states that children over 14 years of age can be subject to action or punishment. By experiencing Post Traumatic Syndrome Disorder (PTSD) which allegedly occurred as a result of the rape he experienced and also the divorce of his parents. experiencing Extreme Emotional Disorder (EED) which is an extreme emotional disorder that can be experienced by a child after experiencing an event that greatly shakes his psyche, the Judge's considerations as outlined in Decision Number: 12/Pid.Sus-Anak/2020/PN JKT.Pst, namely:

1) During the legal process Fitri was given social rehabilitation at the Handayani Social Welfare Institution (LPKS) because psychological recovery would be more difficult if carried out in LPKA; 2) As a victim of sexual crime, she received protection and rehabilitation by the state in the form of education on reproductive health, religious values, moral values, social rehabilitation, and psychosocial assistance during treatment and recovery. 3) In a condition of pregnancy and has entered the age of 17 weeks of pregnancy, it is given a comfortable and calm situation to undergo the pregnancy process properly. given routine pregnancy checks every month so that the baby in the womb remains healthy and his needs are met. 4) Assistance is provided by Social Workers, Forensic Psychologists, caregivers and religious guidance; 5) Both parents provide counseling related to parenting skills to talk and share every day so that the perpetrator receives more intense attention and at the same time parents can monitor the way of thinking, acting and behavior. 6) Continuing their education while serving their sentence and rehabilitation in LPKS Handayani.

2. Judges' considerations in making decisions against children in Decision Number: 9/PID.SUS-Child/2020/PT DKI jo. Decision Number: 12/PID.SUS-Child/2020/PN JKT.PST

Giving or imposing a verdict, the judge gives a judge's consideration divided into two, namely juridical and non-juridical considerations. In practice, before this juridical consideration is proven, the judge will first draw facts in the trial that appear and become a cumulative conclusion from the testimony of witnesses, testimony of the defendant and evidence. Juridical considerations are defined as the judge's considerations based on the facts revealed in the trial and by law have been determined as matters that must be contained in the decision. The finding of law must be in accordance with existing provisions without violating the rules and norms of the law. commit violence against themselves or others. This was done because the panel of judges understood that the statutory provisions were no longer in accordance with the circumstances faced. Juridical Consideration of Judges Juridical consideration of judges in Decision Number: 9/PID.SUS-Children/2020/PT DKI jo. Decision Number: 12/PID.SUS-Anak/2020/PN JKT.PST on a case of criminal violence resulting in death with a child as the perpetrator, the imposition of punishment on children prioritizes the principle of the best interests of the child and the rights of the child, as specified in Article 2 point (d) and Article 3 of Law Number 11 of 2012 concerning the Child Criminal Justice System. In addition, the panel of judges also did not forget the interests of the child's family as a victim, and by holding a sense of justice, Fitri was subject to legal detention with the detention period to be deducted entirely from the sentence imposed while still providing legal protection to the perpetrator. Philosophical considerations. Considerations focused on truth and justice, where in every consideration, the law is produced by the judge by thinking philosophically first where the judge is required to explore and explore the essence of truth in a case. The resulting decision will contain legal rules that become jurisprudence and are followed by other judges. On this consideration, the judge has the goal of creating justice. In.Casu Hakim considers community research reports from community counselors before handing down decisions so that the conclusions drawn by the panel of judges require social rehabilitation, assistance by social workers, forensic psychologists, caregivers and religious counselors, routine health and pregnancy checks, continuing education, and parents to give more time to meet. Sociological Considerations. Sociological considerations are aspects that focus on cultural values that live and develop in society. So it must prioritize Restorative Justice efforts through Diversion. In.Casu, committing violence against oneself or others. This is done because the panel of judges understands that the provisions of the law are no longer in accordance with the circumstances faced by the Perpetrator. The implementation of diversion has been regulated in various legal constructions in Indonesia, both at the level of law to regulated at the level of Supreme Court Regulations, where the provisions in question have required the application of diversion in cases of child crimes. Although diversion cannot be implemented, the judge in his ruling has decided to free the child from punishment. The judge considered the community research report from the community counselor before handing down the verdict so that the conclusion drawn by the panel of judges was needed social rehabilitation, assistance by social workers, forensic psychologists, caregivers and religious counselors, routine health and pregnancy check-ups, continuing education, and parental involvement to give more time together.

Recovery efforts at LPKS Handayani also carry out Family Support and Parenting Skills to both parents. Based on the recommendations of Bapas and the Social Welfare Implementation Institute (LPKS), it was considered by the judge considering that this is also part of the Restorative Justice effort as stated in Law number 11 of 2012 concerning the Juvenile Criminal Justice System. In addition, there is a legal fact that the family of the child who is the victim has forgiven the actions of the Perpetrator. Therefore, this verdict was handed down on the basis of the interests of the

victim's family to remain accommodated with the perpetrator who was sentenced to prison for his actions that had committed violence against children resulting in death, but also with the aim of still being able to fulfill the interests of Fitri and the baby she was carrying could receive more complete care at LPKS Handayani.

Restorative Justice in Diversion is the basis for the protection of human rights mandated in the 1945 Constitution of the Republic of Indonesia as a manifestation of basic rights that must be enjoyed by every individual. The Law of Certainty must be enforced during the criminal justice process, from the initial investigation to the trial court, as stated in the Code of Criminal Procedure (KUHAP). Legal certainty is the essence of law itself, including the application of laws and regulations. The legal system must embody three basic values: justice (philosophical aspect), certainty (juridical aspect), and usability (sociological aspect). (The foundational values of human rights protection mandated in the 1945 Constitution of the Republic of Indonesia represent the embodiment of basic rights that every individual should enjoy. Legal certainty is to be upheld throughout the criminal justice process, from initial investigation to court proceedings, as stated in the Criminal Procedure Code (KUHAP). (Irawati & Wijaya, 2023) Law No. 8 of 1981 concerning the Criminal Procedure Code regulates criminal procedural law nationally based on the nation's philosophy of life and the State's basis to protect human rights. (Irawati, 2023) The verdict can be considered a verdict with nuances of restorative justice, because it looks more at the future of children and their rights in accordance with those mandated in various legal constructions in Indonesia.

Conclusion

The completion of the enforcement of juvenile criminal law applies the principle of *lex specialis derogat legi generali* where specific laws will override general laws. In particular, the provisions in Article 76C of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which criminal threats if the perpetrator is still in the category of children, will be regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Legal protection for children as perpetrators of criminal acts is also regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, where the Law not only looks at the act at the time it is committed but also pays attention to the conditions after the act is committed, so that it can see the condition and motive of the perpetrator when committing his act and consider the rights owned by the child. As a form of legal protection, this law also guarantees the protection of the best interests of children who face the law who will later become the next generation of the nation, so they must prioritize Restorative Justice efforts through Diversion.

Judge's consideration in sentencing the child in Decision Number: 9/PID. SUS-Anak//2020/PT DKI jo. Decision Number: 12/PID. SUS-Children/2020/PN JKT. PST in sentencing children perpetrators of violent crimes resulting in death, Judges use juridical, philosophical and sociological considerations. The juridical consideration of the defendant was proven to violate Article 76C of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection Jo. Article 80 paragraph (3) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In philosophical considerations, the judge argued that the defendant committed the crime because of the encouragement of past trauma from sexual crimes experienced repeatedly by his own uncle and the divorce of his parents that made the defendant more aggressive, with the condition of her pregnancy making her more depressed. In sociological considerations, giving imprisonment to FITRI defendants but not at the Special Child Development Institute (LPKA) but at the Handayani Social Welfare Implementation Institute (LPKS) which has more complete facilities and is suitable for the defendant's physical and mental condition under the supervision of the Central Jakarta Class 1 Correctional Center.

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