

Ratiodecidenti of Judge in Imposing Warning Punishment Against Children in Conflict with the Law from the Perspective of Child Protection

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ABSTRACT

Background. Cases of violence against children still occur frequently in Indonesia. The weak social control of society and the many cases of abuse show that law enforcement in Indonesia is not yet optimal.

Purpose. Child Protection has been regulated in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. And regulations regarding the Juvenile Justice System are regulated in Law Number 11 of 2012 concerning the Juvenile Justice System, but these regulations are not sufficient to guarantee the cessation of cases of maltreatment against children.

Method. The author uses normative juridical research methods. In this case, the Ratio Decidendi of the Judge does not really see from various points of view, it can be seen from the consideration that in the end the Judge imposed a warning sentence on the Child Convict, and the decision did not explain and pay attention to the rights of child victims.

Results. Because in reality there are still many cases of violence and sexual abuse against children. Case No. 3 Pid.Sus-Anak/2023/PN Mll was a case of maltreatment in which the public prosecutor charged the defendant with Article 170 paragraph (2) to 1 of the Criminal Code Jo. Article 81 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System which basically states that juvenile offenders must be detained in a Special Correctional Institution for Children.

Conclusion. Through this paper, it is hoped that law enforcement officials will synergize in implementing child protection and children's rights, especially regarding the guarantee of child protection from violence and harassment.

KEYWORDS

Juvenile Crime, Violent Crimes, Warning Crime

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INTRODUCTION

The rapidly developing era not only has a major influence on the Indonesian State but also has an impact on the development of society, behavior, and cultural changes that exist in society (Hendra dkk., 2023). This has led to an increase in crime rates and rampant violations of the law and criminal acts that can occur in the midst of society and in the family environment. It cannot be denied that globalization followed by the development of the economy, science and technology has positive and negative impacts (Hasan & Amor, 2022). The increasing crime rate in society proves the existence of crime, which is one of the things that often occurs and is experienced by the community is a crime of

One of Roscoe Pound's famous theories "that law is a tool of social engineering" (Al Fathan & Arundina, 2019). In order to fulfill its role as a tool, Pound made a classification of the interests that must be protected by law, namely,

- a. Public Interest The interests of the state to maintain the existence and nature of the state and the interests of the state to oversee social interests.
- b. Individual Interest Interest in domestic relations and interest in property (interest of substance).
- c. Interests of personality Interests in the protection of physical integrity (physical integrity) Free will (freedom of will) Reputation (reputation) Individual personal circumstances (privacy) Freedom to choose religion and express opinions (freedom of belief and opinion).

Criminal justice procedural law is often referred to as formal criminal law. According to Lumintang, formal criminal law contains laws and regulations that regulate how the abstract criminal law is enforced concretely (Hasan, 2020). Meanwhile, Sudarto said that formal criminal law regulates how the instruments of equipment carry out their right to impose punishment.

The role of judges in a judicial process is very important, being a judge in charge of giving decisions must consider various things, Wirjono Prodjodikoro said that judges are different from other officials where judges must really master the law not only rely on honesty and good will.

Ratio Decidendi is an important thing related to the judge's consideration in making a decision. After being enacted on July 30, 2012, Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System (State Gazette of the Republic of Indonesia of 2012 Number 153, Supplement to the State Gazette of the Republic of Indonesia Number 5332, hereinafter abbreviated as SPPA Law) contained new criminal rules that could be imposed on juvenile offenders (Hasan, 2021a). Concept "punishment" is interpreted as punishment. However, according to Subekti and Tjitro Soedibyo, punishment is the imposition of punishment and is an instrument to achieve the goal of punishment (Hasan, 2021b). Meanwhile, according to Wirjono, punishment is a thing that is "criminalized", namely by the competent agency delegated to an individual as something that is unpleasant to feel and also something that is not daily delegated.

Criminal sanctions between the SPPA Law and the Criminal Code (KUHP) have differences. In Article 71 of the SPPA Law as follows,

- (1) Basic punishment for children consists of,
 - a. warning punishment;
 - b. punishment with conditions,
 - 1) coaching outside the institution;
 - 2) community service; or
 - 3) supervision
 - c. job training;
 - d. guidance in an institution;
 - e. imprisonment.

One of the punishments mentioned in Article 71 Paragraph (1) of the SPPA Law is warning punishment. Article 72 of the SPPA Law states that warning punishment is a minor punishment that does not result in restriction of children's freedom (Heidari, 2022). Other than found in Article 71 of the SPPA Law (Hasan, 2022), warning punishment is also found in the Draft of Criminal Code of the House of Representatives Working Committee (February 24, 2017).

Article 123 of the New Criminal Code states that the main punishment as referred to in Article 122 letter a consists of,

- a. Warning punishment;
- b. Criminal punishment with conditions,
 1. coaching outside the institution;
 2. community service; or
 3. supervision.
- c. job training;
- d. coaching in an institution; and

e. imprisonment.

In Decision Number 3 Pid.Sus-Anak/2023/PN MII which is a case of maltreatment, the judge imposed a decision in the form of warning punishment with his consideration (Hilton, 2021). The warning punishment is applied in the Juvenile Criminal Justice System, one of which is to ensure the implementation of the protection of children's rights, especially in this case child victims/victim witnesses.

Legal protection of children is a form of effort to create conditions so that children can carry out their rights and obligations (Ibhagui & Olawole, 2019). Based on the concept of *parents patriae*, the examination of a criminal case in a judicial process is essentially aimed at finding the material truth (*materiële waarheid*) of the case. This can be seen from the various efforts made by law enforcement officials in obtaining evidence.

is needed to uncover a case both at the preliminary examination stage such as investigation and prosecution as well as at the trial stage.

Legal protection of children requires the role of all levels of society in various positions, it is hoped that every citizen can fully realize the importance of children for the country and nation in the future (Deok-Ki Kim & Seo, 2003). If they have matured physically (Mustangimah dkk., 2021), mentally and socially, then that is when children replace the previous generation.

On the matters described above, according to the author (Rioja dkk., 2014), the decision of a judge in a special criminal case for children must fulfill a sense of justice for both children as perpetrators of criminal acts and children as victims of criminal acts.

This research was conducted with the aim to find out the Ratio Decidendi of the judge in imposing "Criminal Warning" to the convicted child (Salendu, 2021). And how the fulfillment of children's rights as victims, in case Number 3 Pid.Sus-Anak/2023/PN MII.

RESEARCH METHODOLOGY

This research uses the type of legal research conducted in normative juridical. Normative juridical is conceptualizing the law as what is written in the legislation (law in books) or law is conceptualized as rules or norms that are a benchmark for human behavior. This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in the legislation.

RESULT AND DISCUSSION

Legal Facts

That there was a crime of maltreatment committed by 4 (four) children, where in Decision Number 3 Pid.Sus-Anak/2023/PN MII the names and identities of the perpetrators were disguised. In the examination, the child perpetrators were referred to as (Child 1, Child 2, Child 3 and Child 4), and the victim was referred to as the child victim (Syahza & Asmit, 2019). In the beginning, it was Child 1 and Child Victim who had a disagreement, where Child Victim tried to invite Child 1 to fight, Child 1 called his three friends, namely Child 2, Child 3, and Child 4 and then the 4 children beat the victim child together, the beating itself occurred at PT Valey Bus Terminal, Langkea Raya Village, Towuti District, East Luwu Regency, which means in public.

Described in the Visum et Repertum Letter Number, 445/1955/PKM-WWD dated February 09, 2023 handled by Dr. Musdalifah which in conclusion, there were six wounds (Wahyuni & Kee Ng, 2012), including closed wounds and one open wound, four closed wounds on the back side of the left arm (Syahza dkk., 2018). The first wound was a 1.2 cm curved abrasion with a blood clot on the wound. The second wound is a red bruise measuring 1.4 x 0.3 cm (Merendino & Melville, 2019). The third wound is a scratch abrasion measuring 1.9 cm in the shape of a line with red surrounding the wound (Dui dkk., 2020). The fourth wound is a scratch abrasion measuring 1.7 cm in the shape of a line with a blood clot in the wound and red around the wound (Kaiser & Reisig, 2019). On the left side of the back, there were two wounds, including a closed wound and an open wound.

The purpose of the Visum et Repertum is to provide the judge (panel) with the facts so that the judge can make an appropriate decision based on the evidence and his/her conviction that considers the factors of reality and facts.

In other cases the Visum et Repertum is used as support for the judge's conviction.

The prosecutor in Decision Number 3 Pid.Sus-Anak/2023/PN MII charged using the legal basis of Article 170 paragraph (2) Ke-1 of the Criminal Code Jo. Article 81 of Law No. 11 of 2012 concerning the Juvenile Justice System. The charges of the public prosecutor are as follows:

1. Stating that Child I et al have been legally and convincingly proven guilty of committing the crime of "openly and with joint force using violence against persons or objects to cause injury" as regulated and punishable in Article 170 paragraph (2) to 1 of the Criminal Code jo. article 81 of Law no. 11 of 2012 concerning the Juvenile Justice System.
2. To impose punishment against Child I et al with Development in an Institution organized by the government for 3 (three) months in the Special Development Institute for Children (LPKA) Maros Regency (Guo dkk., 2019), deducted by the length of time the Child was detained and ordered the Child to remain in detention.
3. Determine the evidence in the form of , - A piece of wood board containing nails with a board length of about 1 meter. IS CONFISCATED TO BE DESTROYED.

And demand that the child perpetrators be fostered and placed in the Special Development Institute for Children (LPKA) (Sheraz dkk., 2022). The witnesses presented were the parents of the perpetrators, where the parents mentioned that the perpetrators (as well as their children) were good children and diligent in worship, thus recognizing that the violence they committed against the victim's child was a mistake that they guaranteed would not be repeated.

The judge's consideration in deciding the juvenile convict with a warning punishment by considering the following mitigating circumstances,

- a. The children and the victim witness have reconciled
- b. The children regretted their actions and promised not to repeat them again.
- c. The children are still in senior high school and must continue their education.
- d. The children were honest and forthright so as to facilitate the trial.

Ratio Decidenti of the judge in imposing the sanction of Criminal Warning to Children in Conflict with the Law based on Decision Number 3 Pid.Sus-Anak/-2023/PNMII.

According to Prof. Dr. Sudikno Mertokusumo, S.H., a Judge's Decision is a statement by a judge, as an authorized official pronounced in court and aims to end or resolve a case or dispute between the parties.

In deciding a criminal case, the judge must decide fairly and must be in accordance with the applicable rules. According to Van Apeldoorn, the judge must be,

1. Adapt the Law to concrete factors, concrete events in society.
2. Add to the law if necessary.

The Judge's Ratio Decidenti can be interpreted as the judge's mind that determines a judge to make a verdict. In every judge's decision, there are reasons that determine why the judge makes the decision.

Ratio Decidenti theory is based on a very basic philosophical foundation by considering all aspects related to the subject matter in question and then looking for laws and regulations that are relevant to the disputed subject matter as a legal basis for making decisions (Liu dkk., 2022), besides that the judge's consideration must also be based on clear motivation to uphold the law and provide justice for the litigants.

In order to be able to provide decisions that truly create legal certainty and reflect justice, judges as one of the state apparatus in charge of carrying out justice must really know the actual sitting of the case, as well as the legal rules applied (Zhu & Shu, 2019), both legal rules written in legislation and unwritten regulations.

The judge's duty in considering a decision must use a progressive and humanist legal approach (Dong dkk., 2021). This means that the judge will consider from several aspects,

including the condition of the victim of the sexual crime, who is basically a child and the impact of the actions committed by the suspect on the child in the future.

The ratio decidendi relationship with the judge's decision itself is very close. In a decision relating to a case decision (Zhang dkk., 2022), there will be a judge's consideration which is used as the basis for making a decision.

In legal theory, rational criteria for judges' decisions have been established, namely *de heuristic* and *de legitimatik* (Alam dkk., 2019). *De heuristic* is a method of solving problems through reasoning as an intellectual process to achieve problem solving (Jian dkk., 2021). Where in this stage the judge tries to find out and find the right and correct solution. And at the *de legitimatik* stage which is an activity concerning issues of justice, using methods with deductive logic to achieve the right thinking pattern and achieve the truth.

The reasons and legal basis used by the judge must be precise and correct as stated in (Article 53 paragraph (2) of Law no. 48 of 2009 concerning Judicial Power) which reads,

"Determinations and decisions as referred to in paragraph (1) must contain legal considerations of judges based on precise and correct legal reasons and bases."

In this case there is a difference when judges consider the law in deciding a case. When the judge in deciding a case is based on the "*ratio decidendi*", he will consider all aspects related to the subject matter at hand and then look for laws and regulations that are relevant to the disputed subject matter as a result.

The legal basis in making a decision and the judge in making considerations must be based on clear motivation to uphold the law and provide justice for the litigants.

When the judge in deciding a case uses the "*ratio decidendi*" then he will consider all aspects related to the subject matter in dispute and then look for laws and regulations that are relevant to the subject matter in dispute as a legal basis for making a decision and the judge's consideration must be based on a clear motivation to uphold the law and provide justice for the litigants.

According to the author (Garofalo dkk., 2019), based on the facts that have been revealed in the trial, there is a lot of congruence between the testimony of the defendant, witness testimony and evidence revealed at trial, so that the two cases have been proven legally and convincingly to have committed the crime of persecution. In addition, because there were no excuses or justifications in this maltreatment case, the two cases could be sentenced, because in the facts of the trial, the public prosecutor was able to prove that the defendant fulfilled the elements of the article charged against the defendant in the indictment, so there was no doubt for the judge to decide this case. However, in the end, the judge did not agree with the public prosecutor's charges, and instead imposed a warning sentence on the perpetrator.

Meanwhile, the protection of children is very necessary, especially for children who are victims of crime, victims of crime are parties who suffer losses both physically, psychologically and materially when a crime occurs.

One of the state's commitments in providing child protection is the ratification of the Convention on the Rights of the Child by the Government with Presidential Decree Number 36 of 1990, which in essence, the convention contains general principles of child protection which include non-discrimination, the best interests of the child, survival and growth of the child, and respect for children's participation. Then, the Indonesian government showed its seriousness in child protection with the enactment of Law No. 11/2012 on Juvenile Justice System.

One of the punishments mentioned in Article 71 Paragraph (1) of the SPPA Law is the Punishment of Warning. In Article 72 of the SPPA Law, it is known that warning punishment is a minor punishment that does not result in restriction of children's freedom. In the subsequent articles, there is no mention on how the warning punishment can be imposed to a child. The simple formulation of warning punishment as explained in Article 72 of the SPPA Law and the absence of government regulations regarding the imposition of warning punishment result in law enforcement officials interpreting the punishment differently so that the main purpose of the enactment of the SPPA Law, namely child protection, becomes blurred.

The end of the goal of justice is that all rights that have been harmed by other parties can be straightened out through a judge's decision. And this decision will be able to be reached by the judge and can be enforced. A judge's decision can be implemented either voluntarily or by force using state tools, which if the reported party does not want to implement it voluntarily.

Judges are required not only based on legalism, or just referring to the law alone, meaning that it cannot only be "Legal Justice" but must be "Social Justice" by using Ratio Decidendi the judge will find it easier to determine a fair decision, because with the ratio decidendi the judge will consider various things and points of view.

In Case Number 3/Pid.Sus-Anak/2023/PN Mll, in deciding the case, according to the author, the judge in his consideration can be seen not using Ratio Decidendi to the fullest. The judge only mentioned in his consideration that the child offender and the child victim had agreed to reconcile, the child offender regretted his actions, the child offender was pursuing further secondary education. In these considerations the judge did not consider and mention the interests of the child victim as a victim of maltreatment which caused several injuries.

Protection of Child Victims Based on the Juvenile Justice Law

The protection of human rights of child victims of criminal acts is regulated by law as a legal umbrella for the obligations of the State towards the people of Indonesia in ensuring the implementation of fundamental rights in the process of protecting and upholding human rights.

This is done based on the state ideology, namely Pancasila, which prioritizes human values, respects the human rights of every citizen, both adults and children. This effort requires guarantees for the continuity of the protection of child victims of criminal acts so that it not only shows legal certainty, but also justice for the child.

Legal protection of child witnesses of criminal acts according to the criminal justice system emphasizes that children are entitled to all the protections and rights stipulated in the provisions of laws and regulations, such as medical rehabilitation and social rehabilitation efforts, both inside and outside institutions.

Law No.11 of 2012 concerning the Juvenile Criminal Justice System also regulates the protection of safety guarantees for children who become witnesses in Article 90 Paragraph (1) item (b) which states "Safety guarantees, both physical, mental and social".

Article 76C of the Child Protection Law states that "Every person is prohibited from placing, allowing, committing, ordering to commit, or participating in violence against children." It is clear that everyone who is in Indonesia, both Indonesian citizens and foreign citizens, is prohibited from allowing violence against children, committing violence against children, and ordering violence against children. Then Regarding the regulation of criminal sanctions regulated in Article 80 paragraph (2) of the Child Protection Law, it is explained that every person who violates the provisions of Article 76C of the Child Protection Law which causes serious injury, the perpetrator is threatened with imprisonment of up to 5 (five) years and or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah).

According to the author, in this case the judge was more inclined to pay attention to the rights and protection of the child convicts, but did not see the child victims. As children, child victims are entitled to protection from acts that lead to social, religious and other forms of discrimination. They must be raised in a spirit of understanding, tolerance, and friendship between nations, peace and universal brotherhood with full awareness that their energy and talents must be devoted to their fellow human beings.

This incident will certainly cause its own trauma for the Child Victim / Victim Witness considering the injuries received by the child victim are not small and this has been confirmed by the Visum Et Reperteum. In addition, the perpetrator should be given a decision that can indeed be a lesson for the perpetrator so that this decision can become a jurisprudence and can be used as a lesson for other children not to commit criminal acts, especially similar criminal acts.

Chapter VII of the Law on Juvenile Justice System Article 89 states that, "Child victims and/or child witnesses are entitled to all protections and rights stipulated in the provisions of laws

and regulations", then in Article 90 paragraph (1) child victims and child witnesses also have the right to,

- a. Medical rehabilitation and social rehabilitation efforts, both in institutions and outside institutions;
- b. Safety guarantees, both physical, mental and social; and
- c. Ease of obtaining information about the progress of the case. The Juvenile Criminal Justice System Law is used when one or both parties, including victims, witnesses and perpetrators, are children. However, the lack of understanding of the laws and regulations by the state apparatus has resulted in the lack of implementation of the Juvenile Criminal Justice System Law.

CONCLUSION

Ratio Decidendi The judge in deciding Case Number 3 Pid.Sus-Child/2023/PN Mll with a warning punishment, did not refer to the charges of the Public Prosecutor, witnesses, or Visum Et Repertum. Although in the decision the judge had stated that the charges of the Public Prosecutor had fulfilled the elements, and validated the evidence submitted by the Public Prosecutor, and stated that the perpetrators (Child Convicts) were proven and declared to have committed the crime of maltreatment. However, the judge only considered the mitigating circumstances of the perpetrators, which included,

- a. The children and the victim witness had reconciled
- b. The children regretted their actions and promised not to repeat them again.
- c. The children are still in senior high school and must continue their education.
- d. The children were honest and forthright which facilitated the trial.

Meanwhile, according to the judge, the aggravating circumstances against the perpetrator were declared NIL.

Valid evidence according to Article 184 of the Criminal Procedure Code, namely the Visum Et Repertum, was excluded from the factors that formed the basis of the decision, even though the judge validated and confirmed that the crime of maltreatment had occurred. Therefore, the juvenile offender was only sentenced to a warning.

The judge's decision was very far from what was demanded by the public prosecutor. The fine demanded by the public prosecutor was expected to cover the cost of healing the victim both physically and psychologically. However, the judge did not apply this in his decision and instead tended to look at and lead to the interests of the child perpetrators of criminal acts.

Criminal Law in Indonesia has various forms of rights for child victims of maltreatment resulting in serious injury which are listed in various applicable and related laws and regulations such as the Law on Child Protection, the Law on Witness and Victim Protection and the Law on the Juvenile Justice System. However, the implementation of protection of the rights of child victims of maltreatment resulting in serious injury is still not optimal, especially in terms of the prosecution of compensation due to criminal acts experienced by children. In Decision No. 3 Pid.Sus-Anak/2023/PN Mll, both in the consideration and decision, the judge considered the rights of the child as the perpetrator of the crime but did not consider the rights of the child victim.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration.

Author 2: Validation; Writing - review and editing.

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