

Juridical Review of Child Perpetrators Of Beatings That Caused The Victim's Child To Die.(Case Study Of Cibinong District Court Decision Number: 153/Pid.Sus/Pn.Cbi/2023)



Nuhry Safari¹, Irwan Triadi², Handoyo Prasetyo³, Bambang Waluyo⁴, Handar Subhandi Bakhtiar⁵

^{1,2,3,4,5} Universitas Pembangunan Nasional "Veteran" Jakarta

Jalan RS. Fatmawati Raya, Pd. Labu, Kec. Cilandak, South Jakarta City, Special Capital Region of Jakarta 12450

ABSTRACT: This research aims to analyze uncivilized acts committed by children in the form of fighting, children committing fighting is a criminal act carried out in groups in public areas which results in injuries and even death, about how the application of criminal law to child perpetrators causes the victim died and the judge's considerations in convicting the child of the perpetrator who caused the victim's death. This type of research uses a normative juridical type, with a qualitative approach where this research was conducted at the Cibinong District Court. The legal materials used are primary legal materials in the form of laws and regulations, secondary legal materials in the form of books, research results, and tertiary legal materials in the form of papers and sources from the internet. The results of the research show that the judge's consideration in convicting the child who was the perpetrator of the beating that caused the victim to die had taken into account all the elements in the indictment so that the sentence handed down to the child perpetrator could provide a sense of justice to the victim and also the child perpetrator by paying attention to the provisions of Law Number 35 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

KEYWORDS: Legal Protection, Juvenile Criminal Justice System, Child Offenders

INTRODUCTION

Brawls among teenagers often occur at the age of under 20 years. This age is still very vulnerable, but the law provides age limits that are categorized as children and considered adults. There are several definitions of children themselves, from several laws and regulations in Indonesia, among others:

- a. Children according to the Criminal Code (KUHP) Article 45 of the Criminal Code provides a limitation on children, namely if they are not yet 16 (sixteen) years old, therefore if they are involved in a criminal case the judge may order that the defendant be returned to his parents, guardian or custodian with no punishment, or order that they be returned to the government with no punishment.
- b. According to civil law Article 330 of the Civil Code (KUHPerdata) states that minors are those who have not reached the age of 21 years and have not married.
- c. According to Law Number 1 of 1974 concerning Marriage, from Article 47 and Article 50 of the Marriage Law it can be concluded that the Marriage Law adheres to the age of majority of 18 years.
- d. According to Law Number 4 of 1979 concerning Child Welfare, a child is someone who has not reached the age of 21 (twenty-one) years and has never been married.
- e. According to Law Number 3 of 1997 concerning Juvenile Courts. A child is a person who in the case of a delinquent child has reached 8 (eight) years but has not reached the age of 18 (eighteen) years and has never been married.
- f. According to Law No. 39 of 1999 on Human Rights, a child is any human being under the age of 18 (eighteen) years and unmarried, including children still in the womb if it is in their best interest.
- g. According to Law No. 23 of 2002 on Child Protection, a child is someone who is not yet 18 (eighteen) years old, including children still in the womb.
- h. According to Law No. 11/2012 on the Juvenile Criminal Justice System, a child is a person who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a criminal offense.
- i. According to International Law, namely the Convention on the Rights of the Child (ratified by Presidential Decree No. 36 of 1990) Article 1 of the Convention on the Rights of the Child (KHA) states, what is meant by a child in this Convention is every

Juridical Review of Child Perpetrators Of Beatings That Caused The Victim's Child To Die.(Case Study Of Cibinong District Court Decision Number: 153/Pid.Sus/Pn.Cbi/2023)

person under the age of 18 (eighteen) years, unless under the law applicable to children it is found that the age of majority is reached earlier.

Children's criminal responsibility is different from adult responsibility. The difference between the responsibility of children and adults is that adults are only accountable for their actions according to the provisions of the Criminal Code, while children must be accountable for their actions in accordance with the provisions of the Criminal Code, and by adjusting the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The responsibility of the State is to protect the rights of children, therefore the State issued Law Number 11 of 2012 concerning the Juvenile Criminal Justice System related to the protection of children and the rights of children who commit unlawful acts, the state established the Juvenile Criminal Justice System to ensure the rights of children are protected from discrimination in criminal trials.

The number of children committing unlawful acts in the community is a social phenomenon that can disturb the peace of the public. These uncivilized acts that children commit are in the form of fighting, massacres, robbery, and others. Children committing fighting is a criminal act carried out in groups in public areas which results in injuries and even death. It is stated in article 1 of Law Number 11 of 2012 concerning the Child Criminal Justice System that children who are victims of criminal acts, children who have conflicts with the law, and children who are witnesses to criminal acts are said to be dealing with the law.

One of the conflicts related to fighting committed by children is found in Bogor Regency. The perpetrator is a child aged 17 years 11 months 28 days which occurred on Saturday, November 19, 2022 at approximately 01.30 WIB in 2022, located at JL Bogor Regency. The perpetrator's child assaulted the victim's child who was only 16 years and 4 months old and caused the victim to die. The perpetrator child committed the act in the following ways:

This case began on Friday, November 18, 2022 around midnight approaching 00.00 WIB Br. AWI came to the perpetrator's child's catfish stall in Sentul at that time Br. Awi came to the stall and invited the perpetrator's child to join the brawl by showing the contents of the DM on Instagram that there would be a brawl against Ibnu Hamzah after being shown the contents of the DM the perpetrator's child said he did not know whether he could come or not because he was still helping the perpetrator's child's mother work, then about 1 hour later, namely at 01. 00 wib the perpetrator's child sent another DM message to AWI's Instagram, at that time AWI replied that he did not know because it was not clear, but AWI again replied "I think so, after that the perpetrator's child asked where to gather, and at that time Br. AWI replied to gather at KPK (kampung kendang) in the alley in front of the gas station near Bakos. Then the perpetrator's child left for the cage village at around 01.30 WIB using the perpetrator's own Astrea Prima motorcycle with No.Pol: B-4074-MJ by riding with the tenam of the perpetrator's child named Sdr DACUN Alias AHMAD FATONI alias TONI BIN SUTO BADI, where the perpetrator's child has prepared a sharp weapon of the type of celurit that the perpetrator's child slips in front of the stomach that the perpetrator's child brings from home, after which the perpetrator's child arrives at the side of the road in the Kp area. Kp. Kandang at around 01.30 a.m., and when the perpetrator's son arrived there was Br. AWI, Witness ZAIN RAMADHANA HIDAYAT Alias KELING, Br. IDRIS, Br. HASAN, Br. RIKO, Br. DACUN, Br. JUANA, Br. DAFI, Witness REGI ARRAFI Alias EGI Bin MUHAMMAD, Witness MUHAMMAD SYADAM Alias ADAM Bin ABRAR KOTO, and Witness RIZKI AGUS TIRTA Alias BARNAY Bin NOVI WAHYUDI (Separate Prosecution File), in this case all of them came riding a motorcycle together, in this case the Son of the Perpetrator was riding with Br. DACUN, and arrived at the appointment location at around 01.30 a.m., where about 15 minutes later the perpetrator's son and his friends just left for the location of the brawl so that it was approximately 01. 45 wib immediately departed towards the direction of Cilangkap, in which case the perpetrator's son carried a celurit which the perpetrator's son kept in front of his stomach, while the witness RIZKI AGUS TIRTA Alias BARNAY Bin NOVI WAHYUDI (separate prosecution file. Carrying a flat iron like a sword), then the group or group of the perpetrator's children began to meet when passing through Kab. Bogor, and at that time the perpetrator's son had seen the group of the opposing party (one of whom was the victim's son) of approximately 5 (five) people standing at the bridge gate but did not do anything, then after passing not far from the opposing party, The opposing party immediately chased while brandishing the sharp weapon he was carrying, and when the position of the perpetrator's child's motorcycle was behind the motorcycle of RIZKI AGUS TIRTA Alias BARNAY Bin NOVI WAHYUDI, where after the perpetrator's child's motorcycle, the perpetrator's child did not remember who else was there, which was clear after passing in front of the gate, the opposing party began to attack. and at that time the perpetrator's child saw the witness RIZKI AGUS TIRTA Alias BARNAY Bin NOVI WAHYUDI get off his motorcycle and the perpetrator's child also got off to jointly attack the opposing party, after that when the perpetrator's child attacked the opposing party, After that, when the perpetrator's son attacked the victim's son AHMAD AKBAR ALIAS AW, the perpetrator's son saw the witness RIZKI AGUS TIRTA Alias BARNAY Bin NOVI WAHYUDI contact or attack or directly oppose by brandishing a flat iron that functioned like a sword to the victim's son until finally in the attack the witness RIZKI AGUS TIRTA ALIAS BARNAY Bin NOVI WAHYUDI slashed the victim's son AHMAD AKBAR ALIAS AW from behind for 1 (one) time on the right shoulder using a tool in the form of 1 (one) long iron plate used as a black fence with a black rubber handle that functioned like a sword. Meanwhile, when the perpetrator's child was about to attack the friend of the victim's child by swinging 1 (one) blade of the celurit he was carrying, the friend of the victim's child actually retreated so that the perpetrator's child turned his attack to the victim's child, and the victim's child had fallen and when the position was falling the perpetrator's child slashed or slashed the victim's child with

Juridical Review of Child Perpetrators Of Beatings That Caused The Victim's Child To Die.(Case Study Of Cibinong District Court Decision Number: 153/Pid.Sus/Pn.Cbi/2023)

1 (one) blade of the celurit carried by the perpetrator's child to the victim's left waist. then the victim's child ran away from the perpetrator's child, Then the victim's child ran away from the perpetrator's child whose position was injured and ran into an alley, and seeing this, the perpetrator's child panicked and left 1 (one) celurit blade that he used to attack the victim's child at that location then the perpetrator's child immediately ran towards his friends and then rode a motorcycle carried by one of his colleagues and after that the perpetrator's child and his entourage immediately turned around and returned to Kampung Kandang / KPK (the initial gathering place).

As a result of the actions of RIZKI AGUS TIRTA Alias BARNAY Bin NOVI WAHYUDI and Son AHMAD FATONI alias TONI BIN SUTO BADI, the victim's child died. For the death of the victim's child, the perpetrators RIZKI AGUS TIRTA Alias BARNAY Bin NOVI WAHYUDI and Child AHMAD FATONI alias TONI BIN SUTO BADI are subject to Article 80 Paragraph (3) Jo Article 76 C of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection.

PROBLEM FORMULATION

The main issues in this journal are:

How is the ideal application of criminal law against child offenders who cause the victim to die?

THEORETICAL OVERVIEW

The theories used in this journal are as follows:

1. Theory of justice

In John Rawls' view of the concept of "original position", there are main principles of justice, including the principle of equality, namely that everyone is equal to universal, essential and compatible freedoms and inequality of social and economic needs in each individual. The first principle is expressed as the equal liberty principle, such as freedom of religion, political freedom, freedom of speech and expression, while the second principle is expressed as the difference principle, which hypothesizes the equal opportunity principle.¹

Lebih lanjut John Rawls menegaskan His view on justice is that justice enforcement programs with a populist dimension must pay attention to two principles of justice, namely, first, providing equal rights and opportunities for the broadest basic freedoms as wide as the same freedom for everyone. Second, being able to reorganize the socio-economic disparities that occur so that they can provide mutual benefits. Thus, the principle of distinction demands that the basic structure of society be organized in such a way that disparities in prospects for the main matters of welfare, income, and authority are earmarked for the benefit of the most disadvantaged people. This means that social justice must be fought for two things: First, to correct and improve the conditions of inequality experienced by the weak by presenting empowering social, economic and political institutions. Second, every rule must position itself as a guide to develop policies to correct the injustices experienced by the weak.

2. Theories of Juvenile Justice

Children in conflict with the law in Law Number 11/2012 article 1 paragraph (3) are children who have reached the age of 12 years but not yet 18 years old and are suspected of having committed a criminal act. Regarding the sanctions given to these children is based on age, if less than 12 years old only subject to action, while those who are 12 years old to 18 years old will be subject to action and punishment. The judicial process against children who commit criminal offenses must be distinguished from the judicial process against adults.

In other words, children who commit criminal offenses must receive special treatment during the judicial process. This special treatment must begin from the time the child is introduced to the criminal justice process, namely from the investigation to the examination in court. As has been expressly regulated in the provisions formulated in Law Number 3 of 1997 concerning Juvenile Courts. According to the provisions of Article 42 of Law Number 3 of 1997, it is emphasized that investigators are obliged to examine child suspects in a family atmosphere, ask for consideration or advice from community supervisors, and the investigation process against delinquent children must be kept confidential.

Similarly, the prosecution and examination in court must be carried out with reference to the protection and welfare of children. Some fundamental principles related to children who commit criminal offenses have actually been outlined in Law Number 3 of 1997 concerning Juvenile Justice. The law contains several fundamental provisions regarding the legal process that must be carried out against a child who commits a criminal offense. The arrangements include:

1. A child between the ages of 8 years and 18 years commits a criminal offense and is brought before the court only after the age of 18 years, he/she shall be brought before the juvenile court as long as he/she has not yet reached the age of 21 years;

¹ John Rawls, 2006. "A Theory of Justice, London: Oxford University press", yang sudah diterjemahkan dalam bahasa indonesia oleh Uzair Fauzan dan Heru Prasetyo, Teori Keadilan, , Pustaka Pelajar. Yogyakarta. hlm. 90.

Juridical Review of Child Perpetrators Of Beatings That Caused The Victim's Child To Die.(Case Study Of Cibinong District Court Decision Number: 153/Pid.Sus/Pn.Cbi/2023)

2. Juvenile court proceedings are conducted in private and may only be attended by the child concerned, his/her parents or guardians or foster parents, legal counsel and community advisors or other parties permitted by the judge, but the decision is pronounced open to the public;
3. The punishment imposed on juveniles may be imprisonment, confinement, supervision or additional punishment in the form of payment of compensation;
4. The prison sentence imposed on a juvenile is ½ of the basic sentence imposed on an adult. If the sentence is death or life imprisonment, the sentence imposed on the child shall be 10 years;
5. If a child commits a criminal offense and is not yet 12 years old, while the punishment is death penalty or life imprisonment, the following punishments shall be imposed: a. returned to the parents, or guardian, or foster parents of the child, b. the child shall be handed over to the State for education and guidance or work training, and c. handed over the child to a social institution managed by the government or a community organization engaged in education, guidance and work training.

RESEARCH METHODS

According to Sugiyono, research methods are defined as scientific ways to obtain data with specific purposes and uses. In general, there are three kinds of research objectives, namely discovery, proof, and development² The definition of research methods according to Sugiyono is that research methods are basically scientific ways to get data with specific purposes and uses. Research methodology can be defined as a science that explains how research should be done. According to Sugiyono, the research method is a scientific way to get data with specific purposes and uses.³ Based on this, there are four keywords that need to be considered, namely scientific methods, data, objectives and uses.⁴

1. Type of Research

In accordance with the title and problems to be discussed in this study and in order to provide useful results, this research was conducted with normative juridical research (normative legal research method). Normative juridical research method is a library legal research conducted by examining library materials or secondary data only.⁵ Juridical-Normative Research is legal research that places the law as a building system of norms. The system of norms in question is about principles, norms, rules from laws and regulations, agreements and doctrines (teachings). This research is conducted using secondary data such as laws and regulations, scientific journals, law books related to law.⁶ Normative juridical research also means doctrinal legal research. Doctrinal legal research is research that can systematically explain the rules governing a particular legal category, analyze the relationship between regulations, explain difficult parts and make it possible to predict future developments. Normative legal research serves to provide juridical argumentation when there is vagueness, emptiness and conflict in a norm.⁷

2. Source of Legal Materials

The source of legal material used in this research is secondary data through document studies, to obtain data taken from library materials, including:

1. Bahan Hukum Primer, yaitu bahan hukum yang mempunyai kekuatan mengikat sebagai landasan utama yang dipakai dalam rangka penelitian ini diantaranya Kitab Undang-Undang Hukum Pidana, Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, Kitab Undang-Undang Hukum Acara Pidana, Undang-undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak, Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak, Putusan Pengadilan Negeri Cibinong Nomor 153/Pid.Sus/2023/PN. Cbi.
2. Bahan Hukum Sekunder, yaitu bahan-bahan yang erat hubungannya dengan bahan hukum primer dan dapat membantu menganalisis dan memahami bahan hukum primer, seperti buku-buku yang berkaitan dengan penelitian, hasil penelitian, hasil seminar, hasil karya dari kalangan hukum dan literatur- literatur.
3. Bahan Hukum Tersier, yaitu bahan-bahan yang memberikan petunjuk maupun penjelasan terhadap bahan hukum primer dan bahan hukum sekunder. Bahan yang dipergunakan dalam penelitian ini adalah kamus hukum, surat kabar, ensiklopedia, makalah, yang berkaitan dengan objek penelitian.

3. Analysis of Legal Materials

Analysis of legal materials is very necessary in a study, this is useful for providing answers to the problems studied. Analysis of legal materials in this study uses qualitative methods. Research using qualitative methods departs from assumptions about complex social realities or phenomena. There is a certain regularity or pattern, but it is full of variations (diversity). Then deductive conclusions are drawn, namely from general things to specific things.

² Sugiyono, 2013, Metode Penelitian pendidikan pendekatan Kuantitatif, Kualitatif, dan R&D), Bandung: Alfabeta, hlm. 5.

³ Sugiyono, 2006, Metode Penelitian Pendidikan; Pendekatan Kuantitatif dan Kualitatif, Bandung: Alfabeta dan R&D, hlm. 106.

⁴ Sugiyono, 2017, Metode Penelitian Kuantitatif, Kualitatif, Bandung: Alfabeta, CV. dan R&D, hlm. 3.

⁵ Soerjono Soekanto dan Sri Mahmudji, 2003, Penelitian Hukum Normatif, Suatu Tinjauan Singkat, Jakarta: Raja Grafindo Persada, hlm. 13.

⁶ Mukti Fajar, 2010, Yulianto Achmad, Dualisme Penelitian Hukum Normatif & Empiris, Yogyakarta: Pustaka Pelajar, hlm. 34 dan 51.

⁷ Djulaeka dan Devi Rahayu, 2020, Buku Ajar: Metode Penelitian Hukum Surabaya: Scopindo Media Pustaka, hlm. 20.

Juridical Review of Child Perpetrators Of Beatings That Caused The Victim's Child To Die.(Case Study Of Cibinong District Court Decision Number: 153/Pid.Sus/Pn.Cbi/2023)

The analysis of this research is carried out by criticizing, supporting, or commenting, then making a conclusion on the results of the research with one's own thoughts and the help of literature review. The method for this type of normative legal research is in the form of a prescriptive method, namely an analytical method that provides an assessment (Justification) of the object under study whether it is right or wrong or what should be according to the law.

RESULTS AND DISCUSSION

That the crime of beating which resulted in the death of a child victim committed jointly between Rizky Agus Tirta alias Barnay Bin Novi Wahyudi and Ahmad Fatoni alias Toni Bin Suto Badi, the case file has been split, which for Ahmad Fatoni alias Toni Bin Suto Badi was tried with case number 11/Pid.Sus /2023/PN.Cbi while for Rizky Agus Tirta alias Barnay Bin Novi Wahyudi was tried with case number 153/Pid.Sus/2023/PN.Cbi.

In the juvenile criminal justice system, children in conflict with the law, children who are victims, and children who are witnesses to criminal acts. A child in conflict with the law is a child who is 12 years old but not yet 18 years old who is suspected of committing a criminal offense; A child victim is a child who is not yet 18 (eighteen years old) who experiences physical, mental suffering and or economic loss caused by a criminal offense; A child witness is a child who is not yet 18 (eighteen years old) who can provide information for the benefit of the legal process starting at the level of investigation, prosecution and court hearing about a criminal case that is heard, seen and or experienced.⁸

In the event that a criminal offense is committed by a child before the age of 18 years and is submitted to a court hearing after the child has exceeded the age limit of 18 years but has not reached the age of 21 years, the child is still submitted to a juvenile hearing (Article 20 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System). Furthermore, in the event that a child under 12 years of age commits or is suspected of committing a criminal offense, then the investigator, community supervisor, makes a decision to hand over to parents / guardians or include them in educational programs, guidance at government agencies or social welfare institutions that handle the field of social welfare.⁹ If in adult cases (18 years of age and above) at every level of examination it is not necessary to be accompanied by parents / guardians, but in cases of children in conflict with the law it is necessary to be accompanied by parents / guardians.¹⁰

Article 21 of Law No. 11/2012 on Juvenile Justice System stipulates that the age of criminal responsibility for children is 12 years old to under 18 years old, for the age limit of children who can be subject to detention is children who are 14 years old and above. For children under 12 years of age, investigators, community supervisors, and professional social workers will examine to decide whether the child will be handed over to his/her parents/guardians, or included in the education/mentoring/guidance program at the central and regional LPKS for a maximum of 6 months.

The handling of criminal cases against children is certainly different from the handling of cases against adults, the handling of children is special because it is also regulated in separate regulations. Understanding the process of handling children's cases of course there may still be some people who do not understand or understand, so that sometimes it raises various assessments, even more fatal if there is a wrong assessment that the handling of children, especially children in conflict with the law, gets special treatment and there are also those who think that children cannot be punished even though it is not that far, it's just that the handling process is regulated specifically.¹¹

It should be understood that the handling of children in conflict with the law is certainly based on several special statutory provisions, which include the following:

- Law No. 11 of 2012 on the Juvenile Justice System, formerly Law No. 3 of 1997 on Juvenile Courts;
- Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection;
- Law No. 17 of 2016 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection into Law;
- Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children who are Not Yet 12 (Twelve) Years Old;
- Supreme Court Regulation Number 4 of 2014 concerning the Implementation of Diversion in the Juvenile Criminal Justice System;
- Peraturan Jaksa Agung No. 06/A/J.A/04/2015 tentang Pedoman Pelaksanaan Diversi.

The examination process at the court hearing for children in the first instance is conducted by a single judge, but the President of the Court in examining children's cases with a panel of judges in the case of criminal offenses punishable by imprisonment of 7

⁸ Mahir Sikki Z.A., 2018, Artikel, Sekilas Tentang Sistem Peradilan Pidana Anak.

⁹ Pasal 21 Undang Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak jo, Pasal 67 Peraturan Pemerintah RI Nomor 65 Tahun 2015 tentang Pelaksanaan Diversi dan Penanganan Anak yang Belum Berumur 12 (Dua Belas) Tahun.

¹⁰ ibid

¹¹ Ibid

Juridical Review of Child Perpetrators Of Beatings That Caused The Victim's Child To Die.(Case Study Of Cibinong District Court Decision Number: 153/Pid.Sus/Pn.Cbi/2023)

years or more difficult to prove. Judges in examining children's cases in juvenile court are declared closed to the public except for the reading of the decision. Then in the process of the trial, the judge is obliged to order the parents / guardian or companion or other legal aid provider; in the event that the parents, guardian or companion are not present, the trial is continued accompanied by an advocate or other legal aid provider and or community counselor.¹²

The judge before making a decision provides an opportunity for parents/guardians/companions to put forward things that are beneficial to the child, then at the time of reading the court's decision it is carried out in a hearing open to the public and may not be attended by the child. Sentencing of children in conflict with the law may be subject to punishment and action, and children can only be sentenced or charged based on the provisions of this Law. Children in conflict with the law who are not yet 14 years old can only be subjected to non-criminal measures, which include returning to parents, handing over to someone, treatment at a mental hospital, and treatment at the Social Welfare Implementation Institution (LPKS), the obligation to attend formal education and / or training held by the government or private entities and revocation of driving licenses, and repairs due to criminal acts. Meanwhile, children who are 14 years old and above can be sentenced to various kinds of punishment as in Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely as follows:

1. Main punishment which consists of a. warning punishment; b. conditional punishment (coaching in institutions, community service, supervision); c. vocational training; d. coaching in institutions and imprisonment;
2. Additional punishment in the form of forfeiture of benefits obtained from criminal offense, fulfillment of customary obligations.

If in the material law a child in conflict with the law is subject to cumulative punishment in the form of imprisonment and fine, then the fine is replaced by vocational training for a minimum of 3 months and a maximum of 1 year. The punishment of restriction of freedom imposed on children is at most $\frac{1}{2}$ of the maximum imprisonment imposed on adults,¹³ whereas the special minimum imprisonment provisions do not apply to juveniles.¹⁴

Detention of children in conflict with the law is placed in the Temporary Child Placement Institution (LPAS), while the place where children serve their sentences is placed in the Child Special Development Institution (LPKA). Then the place where children get social services is at the Social Welfare Implementation Institution (LPKS). Against the Judge's decision at the first level, both the child in conflict with the law and the Public Prosecutor can certainly make further legal efforts, namely appeal, cassation and judicial review. Children who are submitted as children in conflict with the law, namely child victims and child witnesses are entitled to all protections and rights regulated by statutory provisions.

The Child Criminal Justice System is a form of legal protection from the Government against children who commit criminal offenses, as stated by Arif Gosita that child protection is an effort that supports the implementation of rights and obligations. A child who obtains and maintains the right to grow and develop in life in a balanced and positive manner, means getting fair treatment and avoiding harmful threats. Child protection efforts can be a legal action that has legal consequences, thus avoiding children from arbitrary parental actions.¹⁵

The legal protection in question is solely in the interests of justice for justice seekers. Justice is shaped by right thinking, done fairly and honestly and is responsible for the actions taken. A sense of justice and law must be upheld based on Positive Law to uphold justice in law in accordance with the reality of society which requires the achievement of a safe and peaceful society. Justice must be built in accordance with the ideals of law (Rechtidee) in a state of law (Rechtsstaat), not a state of power (Machtsstaat). Law functions as a protection of human interests, law enforcement must pay attention to 4 elements:¹⁶

- a) Legal certainty (Rechtssicherheit);
- b) Legal benefit (Zweckmassigkeit);
- c) Legal justice (Gerechtigkeit);
- d) Legal guarantee (Doelmatigkeit).

Law enforcement and justice must use the right line of thought with evidence and evidence to realize legal justice and legal content must be determined by ethical beliefs, whether a case is fair or not. Legal issues become real if the legal instruments carry out properly and fulfill, obey the rules that have been standardized so that there is no misuse of rules and laws that have been carried out systematically, meaning using legal codification and unification for the realization of legal certainty and legal justice.¹⁷

Law enforcement is carried out when a person is deemed to have violated the provisions of material criminal law or the provisions in the legislation. The term criminal offense comes from the term known in Dutch criminal law, namely strafbaarfeit. Although this term is found in the Dutch WvS and based on the principle of concordation, the term also applies to the Dutch East

¹² Pasal 55 Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

¹³ Pasal 79 ayat 2 Undang-Undang RI Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

¹⁴ Pasal 79 Undang-Undang RI Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak

¹⁵ Arif Gosita, dalam Moch Faisal Salam, 2005, Hukum Acara Peradilan Anak Di Indonesia, Mandar Maju, Bandung, hlm.1.

¹⁶ Ishaq., 2009, Dasar-dasar Ilmu Hukum, Jakarta. Sinar Grafika, hlm. 43

¹⁷ Ibid., hlm. 44

Juridical Review of Child Perpetrators Of Beatings That Caused The Victim's Child To Die.(Case Study Of Cibinong District Court Decision Number: 153/Pid.Sus/Pn.Cbi/2023)

Indies WvS (KUHP). However, there is no official explanation of what is meant by strafbaarfeit. Therefore, legal experts have tried to give meaning to the term, but until now there has been no uniformity of opinion on what is meant by strafbaarfeit.¹⁸

The perpetrator of a criminal offense can be convicted if it meets the condition that the criminal offense committed meets the elements specified in the Law. From the point of view of the occurrence of prohibited actions, a person will be held accountable for these actions, if the action is against the law and there is no justification or elimination of the unlawful nature of the crime committed. And from the point of view of the ability to be responsible, only someone who is capable of being responsible can be held accountable for his actions. In terms of criminalizing someone who commits an act such as against the law, it depends on whether in committing the act he has fault and if the person who commits the act is indeed against the law, then he will be punished.¹⁹

Children in conflict with the law are the actions of children who contradict and violate the applicable and legal provisions in Indonesia, so it can be defined that children in conflict with the law mean children who are still immature according to the law and commit actions that are contrary to applicable and legal provisions. Generally, children in conflict with the law are defined as a child who is suspected, charged or found guilty of violating the provisions of the law or a child who is suspected of having committed or who has been found to have committed a violation of the law.²⁰

This Juvenile Criminal Justice System makes law enforcement officials to be actively involved in the process of resolving cases without having to go through the criminal process so as to produce criminal decisions. Police investigators are one of the law enforcement officers referred to in this SPPA Law, in addition to public prosecutors or prosecutors, and judges. The SPPA Law also regulates institutions involved in the process outside of juvenile justice, such as Bapas, Professional Social Workers, Child Special Development Institutions (LPKA), Temporary Child Placement Institutions (LPAS), Social Welfare Implementation Institutions (LPKS), Family or Guardian Companions, and Advocates or other legal aid providers who play a role in it.

The criminal justice system has evolved from time to time until 2012 with the enactment of Law No. 11/2012 on the Juvenile Criminal Justice System. Prior to the enactment of the Law, there had been a legal product that specifically regulated the Juvenile Court, namely Law Number 3 of 1997. Prior to Law No. 3 of 1997 there were also various provisions or regulations governing the judicial process for children as contained in the Supreme Court Circular Letter, Supreme Court Instruction and Minister of Justice Regulation.

In Law No. 11/2012 there are several forms of legal protection that are certain but not a few also cause problems in terms of normative and implementation arrangements, among others:

1. Diversion Obligation for Children Article 7 of the SPPA Law states that in the event that the threat of a criminal offense is below 7 years and is not a repetition of the crime committed, there is an obligation to carry out a diversion process which means the transfer of the process of handling criminal offenses out of the criminal justice process. Where in the diversion must be carried out at every stage of the process, namely investigation, prosecution and trial.
2. Limitation of age of responsibility In the SPPA Law, there is a limitation of the age of responsibility for children, namely 12-18 years old, where children aged 12-14 years can be subjected to criminal proceedings but are not allowed to be detained and sentences cannot be imprisoned but rather returned to parents or fostered at the Social Welfare Implementation Institution (LPKS). While children who are already 14 and not yet 18 years old can be detained, up to a prison sentence, but still the prison sentence is the ultimum remedium in the Law.
3. Limitation of arrest and detention Forced efforts which include arrest, confiscation and detention are very important points contained in the SPPA Law for juvenile offenders. Arrest should not exceed 1 x 24 hours, and security until detention is carried out must be in a special room for children or placed in the Temporary Child Placement Center (LPAS). The short detention period is also a concern, with 15 days of detention in the police, 10 days in the Prosecutor's Office and 20 days for court hearings.
4. Obligation to provide legal aid Article 21 of the SPPA Law requires the obligation to provide legal aid for juvenile offenders from the beginning of the investigation process. The provision of legal aid refers to Law No. 16/2011 on Legal Aid, where advocates and paralegals are parties that can provide legal aid to children.
5. Obligation of assistance by Community Supervisor Community Supervisor (PK) from the Correctional Center is a party that is obliged to provide assistance to juvenile offenders, assistance includes the stages of the investigation process, investigation, prosecution, trial, supervision of the sentence period until the process of returning to the community after serving the sentence.
6. Handling by specialized Law Enforcement Officials Under the SPPA Law, Investigators, Public Prosecutors and Judges who handle juvenile cases are required to have an integrated special training certificate for 105 hours of training which signifies that

¹⁸ Adami Chazawi, 2007, Pelajaran Hukum Pidana II, Raja Grafindo Persada, Jakarta, hlm. 67

¹⁹ Dewi Sartika, PrinsiP Perlindungan Terhadap anak Yang Melakukan Tindak Pidana, Jurnal Kompilasi Hukum Volume 4 No. 2, Desember 2019 E-ISSN 2598-6414, P-ISSN 2502-5333 open access at : <http://jkh.unram.ac.id> Publisher Magister of Law, Faculty of Law Mataram University This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License, hlm. 210.

²⁰ Mohammad Farid, 2006, Hak Anak yang Berkonflik dengan Hukum Sesuai dengan Standar Internasional. Yayasan Setara. Yogyakarta. hlm. 130.

Juridical Review of Child Perpetrators Of Beatings That Caused The Victim's Child To Die.(Case Study Of Cibinong District Court Decision Number: 153/Pid.Sus/Pn.Cbi/2023)

they become juvenile investigators, prosecutors and judges. This obligation aims to ensure that law enforcers have a comprehensive perspective/understanding of the juvenile criminal justice system.

7. Limitation of punishment sentences As explained earlier, there is a limit on the age of criminal responsibility of children and there are also restrictions on the punishment imposed on children, such as children who are not yet 14 years old cannot be sentenced to imprisonment and there are new sentences in the criminal justice system, namely action criminal sentences, namely returning to parents or handing over to LPKS for a maximum of 6 months of training / rehabilitation.

Penerapan hukum pidana yang ideal terhadap Child perpetrators who cause the victim to die are by referring to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in which the imposition of imprisonment is as an ultimum remedium, which is the final way in law enforcement. Unlike the principle of legality which is regulated in Article 1 paragraph (1) of the Criminal Code, the ultimum remedium is not regulated at all in the Criminal Code, so this principle becomes very broad in its interpretation and very flexible in its use. The judge's legal consideration becomes important in applying this principle to the defendant in court, whether the defendant is given a criminal sanction or other sanctions that are more relevant to the criminal offense charged before the court. Ultimum remedium is one of the principles contained in Indonesian criminal law. Ultimum remedium is one of the principles contained in Indonesian criminal law which states that criminal law should be the last resort in terms of law enforcement. The nature of criminal sanctions as the ultimate weapon or ultimum remedium when compared to civil sanctions or administrative sanctions has harsh sanctions. As a sanction, criminal sanctions must be placed in the last position not in the front, because the nature of criminal sanctions is harsh, and has different implications for each person.

Before the imposition of punishment against children, there are alternative efforts that must be carried out by law enforcers, namely diversion, which is contained in Article 5 and Article 7 of Law No. 11/2012 concerning the Juvenile Criminal Justice System. If the process and results of the diversion agreement are reached, the child does not need to continue the case to the next stage, thus a court decision can be requested. The juvenile criminal justice process will only continue against the child if the diversion process does not result in an agreement or the diversion agreement is not implemented. In Law No. 11/2012 on the Juvenile Criminal Justice System, Criminal Provisions for children have undergone a more complete improvement compared to Law No. 3/1997 on Juvenile Courts, and are expressly regulated in Chapter V on Crimes and Measures in Articles 69 to 83. At the beginning, Article 69 paragraph (1) explicitly states that children can only be sentenced or subjected to actions based on the provisions in this Law. In addition, there is also a limitation on the age of children in criminalization in Article 69 (2) which states that children who are not yet 14 (fourteen) years old can only be subject to measures.²¹ Even in the imposition of punishment or the imposition of measures against children, the basis of consideration for judges is regulated, which is formulated in Article 70, which states "The severity of the act, the personal circumstances of the child, or the circumstances at the time the act was committed or which occurred later can be used as a basis for judges not to impose punishment or impose measures by considering aspects of justice and humanity."²²

CONCLUSION

Based on the results of the discussion above, it can be concluded that the ideal application of criminal law against child perpetrators who cause victims to die with violence committed jointly by minors, legally children in conflict with the law cannot be sentenced to death or life imprisonment. If the criminal offense is punishable by death penalty or life imprisonment, then the punishment that can be imposed is imprisonment for a maximum of 10 years (ten) years. The imprisonment that can be imposed to children is at most ½ (one half) of the maximum imprisonment for adults. The act of participation committed by the child applies the criminal sanctions contained in Article 76 C Jo Article 80 Paragraph (3) of Law Number 11 of 2012, but regardless of the child's actions, the punishment given to the child must be as light as possible, because the child's life is still very early. The abolition is related to the minimum punishment, the minimum imprisonment does not apply to children. Thus, judges in applying criminal sanctions against children must also pay attention to Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection and Law Number 4 of 1979 concerning Child Welfare, as well as Law Number 11 of 2012 concerning the Child Criminal Justice System. This means to provide alternatives to judges so that they try as much as possible to avoid imposing criminal sanctions against children in the form of restraint of freedom.

Advice

Based on the description of the conclusions above, the authors can provide the following suggestions:

1. In order for Judges in imposing criminal sanctions against children to avoid criminal sanctions in the form of restraint of freedom as much as possible, in deciding criminal cases and imposing criminal sanctions on children, apart from being based on Normative Juridical considerations, with professional ethics must also pay attention to Non-Juridical factors, both criminological, sociological and psychological and philosophical, and imposing criminal sanctions on children should not only be fixated on one law, but must pay attention to other laws, such as laws on child protection and laws on child welfare.

²¹ Koesno Adi, 2015, *Diversi Tindak Pidana Narkotika Anak*, Malang: Setara Press, hlm. 18.

²² Ibid

Juridical Review of Child Perpetrators Of Beatings That Caused The Victim's Child To Die.(Case Study Of Cibinong District Court Decision Number: 153/Pid.Sus/Pn.Cbi/2023)

2. So that law enforcement officials such as police, prosecutors, and judges who seek non-penal efforts in overcoming violent crimes committed jointly by minors, and law enforcement officials should provide socialization about the dangers of violence committed jointly by minors.
3. In order for the community to take part in preventing these crimes such as by providing a sense of concern and not underestimating and overlooking the perpetrators and also the community should provide guidance and direction to children in the surrounding environment so as not to commit criminal acts or crimes, the environment where children live should carry out positive activities, for example youth associations that are guided by the surrounding community, or called local youth leaders. For every place of learning for children or elementary, middle and high schools to organize and add positive activities, such as sports activities every week, and farming, etc. and eliminate excessive Study Orientation and Introduction (OSPEK) activities because these activities only endanger the safety of children, and will have an impact that these activities worry parents in accordance with the news on social media.

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Journal/Article

- 1) Dewi Sartika, Prinsip Perlindungan Terhadap anak Yang Melakukan Tindak Pidana, Jurnal Kompilasi Hukum Volume 4 No. 2, Desember 2019 E-ISSN 2598-6414, P-ISSN 2502-5333 open access at : <http://jkh.unram.ac.id> Publisher Magister of Law, Faculty of Law Mataram University This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

Legislation

- 1) Kitab Undang-Undang Hukum Pidana
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