

## RECONSTRUCTION OF JUDGE GOVERNANCE IN EXAMINING CHILD CRIMINAL ACTORS BASED ON JUSTICE VALUES

Sri Endah Wahyuningsih  
Abdul hamid  
Gunarto

---

### ABSTRACT

*The purpose of this study is to examine and to analyze the implementation of judges' governance in examining the perpetrators of child crimes that are currently occurring. The factors that influence the implementation of judicial governance have not been based on the value of justice, and reconstruct the governance of judges in examining offenders' value based justice. This type of research is non-doctrinal research or empirical juridical research. The result of the study shows that the implementation of the judge's governance in examining the perpetrators of child crimes starts since the initial process of the trial until the verdict, though the judges do not have a juvenile justice certificate as a child judge. Factors influencing the governance of judges who examine child offenders at this time have not been based on justice values, among others, applicable laws and regulations, legal awareness, infrastructure, and existing law enforcement resources. Reconstruction of judges' governance that examines perpetrators of child crimes based on the value of justice is that the judge must have a child justice judge certificate and must be tried in the form of a panel of judges. The legal reconstruction is to improve the provisions of Article 43 paragraph (1), Article 43 paragraph (3), Article 44 paragraph (1) and paragraph (2), Article 47 paragraph (1) and paragraph (2), Article 50 paragraph (1) and paragraph (2), and Article 52 paragraph (1) of Law Number 11 of 2012 concerning the Child Criminal Justice System.*

**Keywords:** Reconstruction, Judge Governance, Children, Justice.

---

### INTRODUCTION

Law enforcement by judges against perpetrators and victims of child crime at the court level functions to examine and prosecute child cases, it can only be implemented and further can establish good judges, namely judges who have intelligence, ethics, legal knowledge, religious life, and have technical Justice.<sup>1</sup>

Child protection is an effort to protect children in order to carry out their rights and obligations. Protection of children's rights is essentially related to direct regulation in legislation. Policies, businesses and activities that guarantee the realization of the protection of children's rights are based on the consideration that children are vulnerable and dependent. There are groups of children who experience obstacles in their growth and development, all of the spiritually, physically and socially.<sup>2</sup>

Children are used as an intermediary or engineered in such a way by adults to carry out an act that is actually unknown or realized whether it violates the law or not, and is harmful to themselves or others. For example is in the circulation of drugs and narcotics. At a glance, if you pay attention to the types of criminal acts, the age level of the perpetrators and victims of criminal acts, and the crimes imposed by the Judges of Children. It has been felt to cause new legal problems, namely the difficulty of finding the value of justice in child criminal law in general, and specifically in terms of juridical and elements of perpetrators and victims of criminal acts.<sup>3</sup>

Child criminal law in Indonesia has provided special treatment and protection to children who commit or violate the law both during examinations in police investigators, public prosecutors, and while undergoing court proceedings. Likewise, the criminal threat to be given to juvenile delinquents is also different from the criminal threat given to adults. Exceptions and special treatment of children in the Criminal Procedure Code (KUHAP) as Law Number 8 year 1981 and Law Number 11 year 2012 concerning the Juvenile Justice System. Penal punishment by a judge has been determined  $\frac{1}{2}$  (one half) of the maximum criminal threat committed by an adult, and eliminates the imposition of capital punishment and life imprisonment for juvenile delinquents who have been proven to have committed a crime.

The cases arise, often the child is in the status of a witness and/or victim, so that the child as a witness and/or victim is also regulated in this law specifically regulating sanctions against children based on the age difference of the child, namely for children who are still aged less than 12 (twelve) years are only subject to action. Children who have reached the age of 12 (twelve) years to 18 (eighteen) years can be punished criminal sanctions. One solution that can be taken in handling cases of

---

<sup>1</sup>Bagir Manan, 2007, *Menjadi Hakim Yang Baik*, Jakarta, Varia Peradilan No. 255 Pebruari 2007, page. 5.

<sup>2</sup> Provisions of article 1 number 2 of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.

<sup>3</sup>Bunadi Hidayat, 2014, *Pemidanaan Anak di Bawah Umur*, Bandung, Alumni, page. 10

child crime is the restorative justice approach, which is carried out by means of diversion (diversion). Restorative justice<sup>4</sup> is a process of settlement that is carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community and parties with an interest in a criminal act that occurs to reach agreement and settlement. Restorative justice is considered as a new paradigm in seeing a crime committed by someone. However, in the implementation of the juvenile justice system in Indonesia, in practice, the investigators, prosecutors and courts still face various problems that are not in accordance with the intent and purpose of the enforcement and legal protection of children in Indonesia.

Basing a number of judges' decisions, in law enforcement against children as perpetrators of crimes and there are also children as victims of criminal acts. Referring to the provisions of legislation in force in Indonesia, then when it comes to children as actors, law enforcement in order to protect children will refer more to the provisions of Law Number 11 year 2012 concerning the Child Criminal Justice System. On the other hand, if it is related to children as a victim, law enforcement in order to protect children will be more referring to the provisions of Law Number 35 Year 2014 concerning Amendments to Law Number 23 Year 2002 concerning Child Protection, and Law Number 31 Year 2014 concerning Amendments to Law Number 13 year 2006 concerning the Protection of Witnesses and Victims.

The juvenile justice system is a series of processes of law enforcement as a whole starting from the process at the level of investigations in the police, prosecution in the prosecutor's office. The process of examining and deciding cases is in the district court, the high court, and the Supreme Court, it is done to process the verdicts and counseling. In this dissertation research, researchers conducted further research on the implementation of judicial governance in examining child offenders that occur at this time;. The research question is why is the implementation of the judge's governance in examining child offenders currently not based on justice values? Moreover, this study wants to reconstruct the governance of judges in examining justice-based child crimes.

## RESEARCH RESULTS AND DISCUSSION

### Implementation of Judge's Governance in Examining Offenders

In the Banjarbaru District Court, there are 11 (eleven) judges, and only two (2) people have certificates of judicial justice. These judges who do not have a juvenile justice certificate not only examine and decide cases of child crimes, but also carry out other criminal and civil court cases.

This has led to an unfocused case examination, the waiting room is less comfortable and not safe for children, and the courtroom for children is not yet closed. The trial schedule is still chaotic. The child cases should be prioritized because judges, prosecutors, legal counsel, and disciplinary officers are not disciplined. Official clothing or attributes are sometimes released in the child's courtroom when the child is in the courtroom. So far, special legal counsel and community counselors have only been used as formal requirements, because they were not present and accompanied in every trial.<sup>5</sup>

Based on the age and sex of the child in conflict with the law in the Pelaihari District Court, it can be seen from table 1 as follows:

**Table 1**  
**Age and Gender of Child Actors in Pelaihari District Court<sup>6</sup>**

No.	Age	Gender	Total
1.	13 years old	Male	2
2.	15 years old	Male	2
3.	16 years old	Male	4
4.	17 years old	Male	3
5.	18 years old	Male	1
	Total		12

Based on these data, it turns out that the age of the child in conflict with the law occurring in the legal area of the Pelaihari District Court is from the age of 13 years to 18 years, consisting of: 13 (13) years old children, 2 15-year-old children (two) people, children aged 16 as many as 4 (four), children aged 17 years as many as 3 (three) people, and children aged 18 years

<sup>4</sup> Joint Decree (SKB) dated December 22, 2009, Ministry of Law and Human Rights, Minister of Women and Children Empowerment, Minister of Social Affairs, Republic of Indonesia Supreme Court, Attorney General of the Republic of Indonesia and National Police of the Republic of Indonesia, and other legislation that agreed that the detention / imprisonment of children is the last resort, by prioritizing a restorative justice approach as a basis for criminal remedies for children who are faced with the law.

<sup>5</sup> Results of Interview with Muhammad Umaryaji, Child Judge of the Banjarbaru District Court on 10 August 2017.

<sup>6</sup> Source: Data from research results in 2017 at Pelaihari District Court.

as many as 1 (one) person, and of the 12 children all were male.

Based on the detention and type of case carried out by children in conflict with the law in the Pelaihari District Court, it can be seen from table 2 as follows:

**Table 2**  
**Detention and Types of Child Cases in Pelaihari District Court<sup>7</sup>**

No.	Detention	Types of Child Cases	Note
1.	Arrested	Theft of Article 363 paragraph (2) of the Criminal Code	10
2.	Arrested	Narcotics Article 112 Number 35 Year 2009	1
3.	Arrested	Violence of children resulting in serious injury to Article 80 paragraph (2) of Law Number 35 Year 2014	1
	Total		12

Based on these data, all 12 (twelve) children in conflict with the law in the Pelaihari District Court were all detained by the judge. While cases of criminal offenses committed by children are 10 (ten) children committing criminal acts of theft as threatened and convicted in the provisions of Article 363 paragraph (2) of the Criminal Code (KUHP), 1 (one) child commits a crime of theft as threatened and convicted of the provisions of Article 112 of Law Number 35 Year 2009 concerning Narcotics, and 1 (one) child committing a crime of child violence resulting in serious injuries as threatened and convicted in the provisions of Article 80 paragraph (2) of Law Number 35 Year 2014 About Child Protection.

Based on the criminal conviction imposed by a judge on a child in conflict with the law in the Pelaihari District Court, it can be seen from table 3 as follows:

**Table 3**  
**Criminal Submissions by Judges in Pelaihari District Court<sup>8</sup>**

No.	Penalty Imposition	Total
1.	3 months, 15 work training days	1
2.	4 months	3
3.	4 months, 15 work training days	2
4.	1 month, 15 days	1
5.	9 months, 3 months of work training	1
6.	9 months, 4 months of work training	1
7.	1 month	1
8.	1 year	1
9.	Criminal actions for 1 year in Banjarbaru LPKS	1
	Note	12

Based on these data, it turns out that the judge handed down the verdict against the child in conflict with the law in the Pelaihari District Court consisting of: 3 (three) children sentenced to a criminal sentence for 4 months, 2 (two) children were sentenced for 4 months, 15 work days, 1 (one) child is sentenced to a criminal sentence for 9 months, 4 months of work training, 1 (one) child is sentenced to a criminal sentence for 9 months, 3 months of work training, 1 (one) child is sentenced to 3 months criminal sentence, 15 training days work, 1 (one) child is sentenced to a criminal sentence for 1 month, 15 days of work training, 1 (one) child is sentenced to a criminal decision for 1 month, 1 (one) child is sentenced to 1 year, 1 (one) person the child was sentenced to a 1-year criminal sentence in the Banjarbaru LPKS.

Based on the case of a child crime in the Pelaihari District Court, the judge who checks and decides the case of a child offense with a prison decision and there is an action in the form of a 1 (one) year Criminal action in Banjarbaru LPKS in Violence of children resulting in serious injury Article 80 paragraph (2) Law Number 35 year 2014 concerning Child Protection. It has been in accordance with the types of criminal sanctions as referred to in the provisions of Law Number 11 of 2012 concerning the Criminal Justice System of Children, but it is still not maximal and has narrated to the combined theory of criminal imposition between absolute and relative. The Pelaihari District Court Judge since receiving a child case delegated by the Public Prosecutor continues to detain the child who is facing the law and imposes a prison sentence.

In Pelaihari District Court there are 8 (eight) judges, and only 2 (two) judges have a certificate of juvenile justice. Judges who does not have a child justice certificate is not only examine and decide cases of child crimes, but also carries out other criminal and civil court cases. This has led to an unfocused case examination, the waiting room is less comfortable and not safe for children, and the courtroom for children is not yet closed. The trial schedule is still chaotic, the child cases should be prioritized because judges, prosecutors, legal counsel, and disciplinary officers are not disciplined. Official clothing or attributes are sometimes released in the child's courtroom when the child is in the courtroom. So far, special legal counsel and community

<sup>7</sup> Source: Data from research results in 2017 at Pelaihari District Court

<sup>8</sup> Source: Data from research results in 2017 at Pelaihari District Court.

counselors have only been used as formal requirements, because they were not present and accompanied in every trial. Limited community guidance officers and were in Banjarmasin, a relatively far distance from Pelaihari District Court.<sup>9</sup>

Based on the age and sex of the child in conflict with the law in the Martapura District Court, it can be seen from table 4 as follows:

**Table 4**  
**Age and Gender of Child Actors in Martapura District Court<sup>10</sup>**

No.	Age	Gender	Total
1.	15 years old	Male	1
2.	16 years old	Male	2
3.	17 years old	Male	2
	Total		5

Based on these data, it turns out that the age of a child in conflict with the law occurring in the jurisdiction of the Martapura District Court is from the age of 15 to 17 years, a 15-year-old child of 1 (one), 1 (one) year old child, and 17 (two) 17-year-old children, and of the 5 (five) children are male.

Based on the detention and type of case carried out by children in conflict with the law in the Martapura District Court, it can be seen from table 5 as follows:

**Table 5**  
**Detention and Types of Child Cases in the Martapura District Court**

No.	Detention	Types of Child Cases	Note
1.	Arrested	Narcotics Article 112 paragraph (1) Law Number 35 Year 2009	2
2.	Arrested	Relationship to Article 81 paragraph (1) of Law Number 35 Year 2014	1
3.	Arrested	Sharp weapons Article 2 paragraph (1) Act Drt. Number 12 Year 1951	1
4.	Arrested	Theft of Article 363 paragraph (2) of the Criminal Code	1
	Total		5

Source: Data from research results in 2017 at the Martapura District Court.

Based on these data, all of the 5 (five) children in conflict with the law in the Martapura District Court were all detained. Whereas the criminal case done by the child consists of: 2 (two) children committing criminal acts of narcotics as threatened and convicted in the provisions of Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, 1 (one) child committing a narcotics crime as threatened and convicted provisions of sexual intercourse Article 81 (1) Law Number 35 of 2014 concerning Child Protection, 1 (one) child commits a crime carrying sharp weapons as threatened and punished under the provisions of Article 2 paragraph (1) Emergency Law Number 12 of 1951, and 1 (one) child commits a crime of theft as threatened and convicted of theft of Article 363 paragraph (2) of the Criminal Code (KUHP).

Based on the criminal convicted by the judge of a child in conflict with the law in the Martapura District Court, it can be seen from table 6 as follows:

**Table 6**  
**Criminal Submissions by Judges in Martapura District Court**

No.	Penalty Imposition	Total
1.	1 month, with a 6-month suspended sentence without being undertaken, the child carries out community service at the Village Hall	1
2.	7 months	1
3.	1 year and 6 months, 3 months of work training	2
4.	3 years and 3 months, 3 months of work training	1
	Total	5

Source: Data from research results in 2017 at the Martapura District Court

Based on these data, it turns out the judge handed down the verdict on the child in conflict with the law in the Martapura District Court consisting of: 2 (two) children sentenced for 1 year and 6 months, 3 months of work training, 1 (one) child was sentenced during 3 years and 3 months, 3 months of work training, 1 (one) child is sentenced for 7 months, and 1 (one) child is sentenced

<sup>9</sup> Interview with Leo Mampe Has Losses, Child Judge Pelaihari District Court on August 16 2017.

<sup>10</sup> Source: Data from 2017 research results at the Martapura District Court.

for 1 month, with a 6-month suspended sentence without being served, the child carries out community service in the Balai Village.

Based on the case of a child crime in the Martapura District Court, the judge who examined and decided the case of a criminal offense with a prison sentence and there was a one-month verdict, with a 6-month suspended sentence without being carried out. The child carried out community service in the Village Hall, in the case of Article crimes 2 paragraph (1) Law Drt. Number 12 year 1951 on sharp weapons. It has been in accordance with the types of criminal sanctions as referred to in the provisions of Law Number 11 year 2012 concerning the Criminal Justice System of Children, but it is still not maximal and has narrated to the combined theory of criminal imposition between absolute and relative. The District Court Judge Martapura since receiving a child case is delegated by the Public Prosecutor continues to detain children who are facing the law and impose prison sentences.

In the Martapura District Court there were 8 (eight) judges, and only 2 (two) judges had a certificate of juvenile justice. Judges who do not have a child justice certificate is not only examine and decide cases of child crimes but also carry out other criminal and civil court cases.

This can lead to case checks being out of focus. The Martapura District Court is one of the courts that has criminal justice after the Banjarmasin District Court due to its densely populated population. The waiting room is less comfortable and not safe for children, and the courtroom for children is not yet closed. The trial schedule is still chaotic, the child cases should be prioritized because judges, prosecutors, legal counsel, and disciplinary officers are not disciplined. Official clothing or attributes are sometimes released in the child's courtroom when the child is in the courtroom. So far, special legal counsel and community counselors have only been used as formal requirements, because they were not present and accompanied in every trial. Limited community guidance officers and were in Banjarmasin, which was relatively far from the Martapura District Court.

### **Factors that influence the implementation of judicial governance in examining child offenders have not fulfilled the value of justice**

If it is considered more comprehensively, the impression arises that the enforcement and protection of perpetrators, victims and witnesses of child crimes have not or are not based on the value of justice. This is influenced by several factors, including the following:

#### **a. Laws and regulations.**

Legislation in the legal system is a very decisive factor for the achievement of a legal order because for the plague, one of the objectives of the establishment of the law is the main source of law, which many legal rules do come from legislation, which write down the law in various laws and record it in the law.<sup>11</sup>

The absence of laws specifically regulating Internet crime (cybercrime) or cybercrime, for example, can hamper law enforcement because public prosecutors have become difficult to ensnare defendants. To prevent the defendant from escaping the indictment, the public prosecutor must ensnare it with articles that are commonly used to ensnare conventional criminal offenders. As a result, the criminal sentence imposed on the defendant was not optimal.

Similar conditions and situations also occur in efforts to provide protection to witnesses and victims of criminal acts. The law that regulates the protection of witnesses and victims of criminal offenses that have so far existed is still partial and its existence is spread in various laws and regulations so that it only applies to certain criminal acts. For example, Article 35 of Law Number 26 year 2000 concerning Human Rights Courts and Article 36 to Article 42 of Law Number 15 year 2003 concerning Terrorism Crimes. It gives victims or their heirs the right to obtain compensation, restitution and rehabilitation, related to the suffering suffered as a result of the crime of terrorism.

The granting of rights to victims or their heirs as stipulated in the above law certainly cannot be applied to other crimes, such as conventional crime (street crime). Even though the consequences suffered by victims of crime (whatever type of crime) are the same, namely the emergence of losses both material and immaterial.

There has been Law Number 11 year 2012 concerning the Child Criminal Justice System and Law Number 31 year 2014 concerning the Protection of Witnesses and Victims. Theoretically it is good, but practically in its implementation it has not shown partiality to victims of criminal acts. Law No. 31 year 2014 concerning Protection of Witnesses and Victims, is considered only as a written regulation that is difficult to operate maximally, because so far there are still many rights of victims of criminal acts both at the level of investigation, prosecution, court and until the case is completed and the perpetrators have already served their sentences even the perpetrators have breathed in the air of freedom. The victims remain unnoticed and as if they have been deliberately forgotten, both by law enforcers and the public and perpetrators.

Victims of sexual abuse and sexual harassment, for example, have been investigated since the beginning of the case have been very depressed and suffering both mentally and physically, especially the shame that plagued not only the victims but also the families of the victims. In the family environment of the victim for example, the victim has been very depressed, embarrassed, and feels guilty. There is even a real family hiding or securing the victim to another place so that there is no known whereabouts, or even the victim or his family does not report the incident of the crime he has experienced to law enforcement.

---

<sup>11</sup>J. Van Kan dan J.H. Beekhuis, 1997, *Pengantar Ilmu Hukum*, Jakarta, Ghalia Indonesia, page. 147.

Similarly, when a criminal case trial is examined in a District Court, the victim will give a testimony or statement before a judge, public prosecutor, defendant, defendant's legal counsel, supervisor, parent or guardian, to explain and answer the questions from the judge, public prosecutor, and defendant legal counsel. The position of the victim as a witness to the "crown" in practice is often not often used as a new "defendant" in the forms of questions that discredit him especially questions from the defendant's legal counsel.

There are a number of treatments that are less wearing to the perpetrators, victims and witnesses when attending trials in the District Court to hear their testimony or testimony to the case of child offenses committed by the perpetrators, including:

- (1) Actors, victims and witnesses as well as families come and go home when attending a trial at the District Court at their own expense, without being picked up or escorted by authorized officers for that matter, in this case the Witness and Victim Protection Agency (LPSK) as the responsible institution to handle the provision of protection and assistance to witnesses and victims not yet formed
- (2) Actors, victims and witnesses and their families waited too long in the District Court, even though the written hearing was at 9:00 am (morning).
- (3) Actors, victims and witnesses and families are not welcome to enter the children's waiting room that has been specifically provided for that;
- (4) Child waiting rooms that have been prepared by the District Court are inadequate and narrow in size, and are not equipped with electronic facilities such as air conditioners or fans and so on to be comfortable and at home indoors.
- (5) While waiting for the trial, the perpetrators, victims and witnesses and the families of the victims are not provided with food and drink, and if they want to eat and drink, they buy themselves in the canteen that is available around the court
- (6) Actors, victims and witnesses as well as families when entering and leaving the District Court use the same door as other people, so that their presence can be seen or noticed.
- (7) Actors, victims and witnesses are not given special clothing such as veils or headscarves or other clothing so that their identity is not publicly known.
- (8) To enter the juvenile court room specifically for this purpose, both judges, public prosecutors, community supervisors, legal counsel, perpetrators, victims, witnesses and families of victims of public roads or alleys, which are also used by other people so that the children's trial becomes public knowledge.
- (9) The hearing of children is only closed to the public when examining the trial, but the reading of the verdict is open to the public, as a result the public increasingly knows the case of the crime.

**b. Legal awareness factor.**

In the application of legal protection to victims of crime, especially victims of domestic violence, many victims or their families refuse to report violence that befalls them for various reasons, such as fear of threats from perpetrators or fear if the problem reportedly will cause disgrace to the victims and their families. In fact, from a juridical standpoint, this omission can be detrimental to the victims themselves, in the form of prolonged suffering. Similarly, the absence of reports or complaints from victims or their families will make the criminal justice process against perpetrators of violence not work. The same can be found for victims of severe human rights violations, when the victim (family) will give a complaint report to the authorities or will act in court, both physical and psychological threats and terror, often covering the victim and his family, who ultimately causing victims (families) to be reluctant to report or testify.

Especially for cases of domestic violence, the attitude of neglecting the occurrence of domestic violence will have an impact on the emergence of attitudes that see domestic violence as a natural condition faced in the household. Therefore, other parties do not need to intervene. Even though law enforcement officers (the police) have sought various ways to overcome this obstacle, such as the establishment of Special Service Spaces in almost every police resort (Polres), or cooperating with hospitals, but the number of victims of domestic violence (Domestic Violence) those who report to the police are still few, even though in reality these cases of domestic violence are increasingly showing increasing numbers.

Something similar was found in other crimes, such as persecution, theft, and so on. The feeling of fear of an attempt to take revenge from the perpetrator is the cause of the victim not wanting to report to the police, especially if the perpetrator has provided compensation for the victim or his family, the case is considered to have been completed.

**c. Factor supporting facilities.**

In the case of narcotics, the obstacles to the unavailability of adequate infrastructure are also common. When child victims take part in a rehabilitation program, in addition to the lack of rehabilitation centers, representative supporting facilities have not been adequately available, both in terms of quantity and quality. Thus, it is not excessive if there are now many rehabilitation centers that offer alternative treatments.

Rights granted by law to witnesses and victims and very difficult to implement, such as the right to:



- (1) obtain protection for personal, family and property security.
- (2) participate in the process of selecting and establishing forms of protection and security support.
- (3) provide information without pressure.
- (4) get a translator.
- (5) be free from questions that ensnare.
- (6) obtain information about the development of the case.
- (7) obtain information regarding court decisions.
- (8) obtain information in the event that the convict is released.
- (9) be kept anonymous.
- (10) obtain a new identity.
- (11) obtain a temporary residence.
- (12) obtain a new residence.
- (13) obtain a change in transportation costs as needed.
- (14) get a legal counsel.
- (15) obtain temporary living expenses until the protection deadline ends
- (16) The right to get assistance.<sup>12</sup>

**d. Factor of human resources.**

Limited human resources both in quantity and quality of child judges who have fulfilled the requirements to hear cases of child crimes also influence the quality of law enforcement and protection for children who are faced with the law. The treatment of child victims of criminal acts is indeed not the same as the treatment of children as adult perpetrators. Since, both are in different positions and legal status. It is impossible if the treatment of children as victims is equated with children as perpetrators. The law has clearly distinguished the rights of children as victims and children as perpetrators of criminal acts.

**2. Reconstruction of Judge Governance in Examining Child Criminal Actors Based on Justice Value**

A crime that has occurred has always been accompanied by a victim. The occurrence of victims of criminal offenses is not only the loss of life, but also other losses such as property and the future. Therefore there are many studies on the need for protection against victims of crimes legally as stated by Muladi for the following reasons:

- (1) The criminal process in this case contains general and concrete meaning. In a general sense, the criminal process as an authority in accordance with the principle of legality, namely poena and crimen must be determined in advance if it is intended to impose a criminal offense on the offender. In a concrete sense, the criminal process is related to criminal determination through penitentiary infrastructure (judges, prison officials, etc.). Here contained moral demands, in the form of philosophical linkages on one side, and sociological linkages within the framework of human relations in society. Sociologically, society is a "system of institutional trust"/institutionalized belief system and integrated through norms expressed in institutional structures such as police, prosecutors, courts, and correction institutions. The occurrence of crimes against the victim means the destruction of the belief system, the regulation of criminal law and other laws concerning the problem of the victim serves as a means of returning the belief system;
- (2) The existence of the social contract argument, namely the state monopolizes all social reactions to crime and prohibits personal actions, and social solidarity arguments that the state must protect its citizens in fulfilling their needs if citizens experience difficulties, through cooperation in society based on or using facilities provided by the state. This can be done either through improving services or by regulating rights;
- (3) Victim protection is associated with one of the objectives of punishment, namely conflict resolution. Conflict resolution caused by criminal acts, restoring balance and bringing about peace in society.<sup>13</sup> In connection with efforts to protect victims through criminal justice so far many have been abandoned. The problem of crime is always focused on what can be done to criminals and is less questionable about what can be done with victims. Everyone assumes that the best way to help the victim is to catch the criminal, as if the criminal is the only source of trouble

---

<sup>12</sup> See Article 5 paragraph (1) letters a through p of Law Number 31 of 2014 concerning Protection of Witnesses and Victims,

<sup>13</sup> Muladi, 1997, *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, UNDIP, Semarang, page. 176-177.

for the victim.<sup>14</sup> In the 1980 National Law renewal symposium, a broad formulation of the concept of community protection was stated, namely in addition to protecting the community from crime and the balance and harmony of life in the community, it also included an element of the need to pay attention to the interests of victims.<sup>15</sup>

The perspective of victim protection as an element in the community protection policy is also included in the results of the congress in Milan, Italy, as quoted by Barda Nawawi Arief in the Declaration of Justice for Victims of Crime and Abuses of Power, which states that "Victims should be perceived as an integral part of the total criminal justice system" therefore, said Barda Nawawi Arief, that attention to the rights of victims must be seen as an integral part of the overall criminal policy.<sup>16</sup>

If it is associated with the protection of victims, the perspective of victimization provides policy content on victim protection. In terms of the effort to orient the welfare of the victim, it is also related to the policy of victim protection as an integral part of the policy of protecting the community as a whole, namely in order to achieve social welfare. Bassiouni, as quoted by Barda Nawawi Arief, said that the objectives to be achieved by the criminal in general are manifested in social interests that contain certain values that need to be protected. Social interests according to Bassiouni are:<sup>17</sup>

- (1) Orderly maintenance of society;
- (2) Protection of citizens from crimes, losses or harm that cannot be justified, carried out by others;
- (3) Re-socializing (re-socializing) lawbreakers;
- (4) Maintaining the integrity of certain basic views regarding social justice, human dignity and individual justice.

Protection of victims is essentially a protection of human rights. As stated by Separovic, that the rights of human beings in the criminal justice sector is a strategic input dimension.<sup>18</sup> In the national level, such as the value of human rights (HAM) in Pancasila, and in the global level, standards in the instrument of international human rights (human rights) provide a humanitarian content recognized by civilized society.

Some international human rights standards can be stated as follows:<sup>19</sup>

- (1) Code of Conduct for Law Enforcement Officials;
- (2) Basic Principle on the Independence of the judiciary;
- (3) Basic Principle on the Role of Lawyers;
- (4) Guidelines on the Role of prosecutors;
- (5) Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power;
- (6) Declaration on the protection of persons from being subjected to torture and other cruel;
- (7) Universal Declaration of Human Rights.

Thus, in the implementation and law enforcement of the juvenile justice system as stipulated in Law Number 11 year 2012, as well as other laws and regulations related to this matter such as Law Number 35 year 2014 concerning Amendments to Laws Law Number 23 Year 2002 concerning Child Protection, Law Number 31 Year 2014 concerning Amendment to Law Number 13 Year 2006 concerning Protection of Witnesses and Victims, and other laws and regulations, must pay attention to the basic rights of children. As a child they must be treated specifically too, unlike the treatment and protection of adults.

Law enforcement by judges against perpetrators and victims of criminal acts has a very large influence on the future of the child, it is supposed that the child who commits a crime and the victim is also the responsibility of all parties, why children can act and/or become victims of criminal acts. Of course, the ultimate goal is not to make children more mature in committing crimes, prison is not the goal of child punishment, prison is not a good place for child development, imprisoning children is not a good solution. Since prison is an adult place.

---

<sup>14</sup>Mulyana W. Kusumah, 1981, *Aneka Permasalahan dalam Ruang Lingkup Kriminologi*, Alumni, Bandung, page. 9.

<sup>15</sup>Barda Nawawi Arief, 1994, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Ananta, Semarang, page. 91

<sup>16</sup>Barda Nawawi Arief, 1996, Bunga Rampai Kebijakan Hukum Pidana, *op. cit.*, page. 19-20.

<sup>17</sup>*Ibid*, page. 39-40

<sup>18</sup>Zvonivir Separovic Paul, 1985, *Victimologi Studies at Victims*, Pravni Fakultet, Zagreb, page. 25.

<sup>19</sup>M. Cherif Bassiouni, 1994, *The protection of Human Rights is the Administration of Criminal justice, a Compendium of United Nation Norms and Standards, collaboration with Alferd de Zayas*, Centre for Human Rights United Nation, New York, page. xiii-xx.



If there is no other choice but to imprison him, the law enforcers must make the child a national child whose rights must be considered and guaranteed to prevent violations of children's rights. Law enforcement officials should carry out what has been determined by legislation, all for the good of the child now and in the future.

Table  
Legal Reconstruction of Judge Governance in Examining Justice-Based Child Criminal Actors

No.	Before Reconstruction	Weakness	After Reconstruction
1.	<p>Provisions of article 43 of Act Number 11 of 2012 concerning the Child Criminal Justice System</p> <p>(1) Examinations in court hearings on child cases are carried out by a judge determined by a decision of the Chief of the Supreme Court or another Officer appointed by the Chief of the Supreme Court upon the proposal of the chairperson of the relevant district court through the head of the high court.</p> <p>(3) In the event that there is no judge who fulfills the requirements as referred to in paragraph (2), the task of examining at the child's hearing is carried out by a judge who performs the task of examining criminal acts committed by adults</p>	<p>Not all judges have certificates of justice for juvenile justice</p>	<p>Provisions of article 43 of Act Number 11 of 2012 concerning the Child Criminal Justice System (1) Examination in a court hearing on a child's case is carried out by a judicial-certified judge who is determined by a decision of the Chief of the Supreme Court or another Officer appointed by the Chief of the Supreme Court on the proposal of the chairman of the relevant court through the head of the high court. (3) Examination in a child's trial must be carried out by the judge as referred to in paragraph (2), and the examination not carried out by the judge as referred to in paragraph (1) results in the decision being null and void, and the examination carried out in the closest court that has the judge referred in paragraphs (1) and (2)</p>
2.	<p>Provisions of article 44</p> <p>(1) The judge checks and decides the child case in the first level with a single judge.</p> <p>(2) The head of a district court can determine the examination of child cases with the panel of judges in the case of a criminal offense that is threatened with imprisonment of 7 (seven) years or more or difficult to prove it.</p> <p>(1)</p>	<p>(1) Deviating the judicial power law that the judicial process is handled by the panel of judges (2) Subjective legal considerations, due to assembly deliberations and no one to argue (3) a single child judge is also a judge who hears other criminal and civil cases</p>	<p>Provisions of article 44</p> <p>(1) The judge checks and decides the child case in the first level is obligatory with the panel of judges.</p> <p>(2) deleted</p>
3.	<p>Provisions of article 47</p> <p>(1) The Appellate Judge checks and decides the child case in the level of appeal with a single judge.</p> <p>(2) The head of the high court can determine the examination of child cases with the panel of judges in the case of a criminal offense that is threatened with imprisonment of 7 (seven) years or more or difficult to prove it</p>	<p>(1) Deviating the judicial power law that the judicial process is handled by the panel of judges (2) Subjective legal considerations, due to assembly deliberations and no one to argue (3) a single child judge is also a judge who hears other criminal and civil cases</p>	<p>Provisions of article 47</p> <p>(1) The Appellate Judge checks and decides on child cases in the mandatory appeal level with the panel of judges.</p> <p>(2) deleted</p>
4	<p>Provisions in article 50</p> <p>(1) The Cassation Judge checks and decides the child case at the level of appeal with a single judge.</p>	<p>1) Deviating the judicial power law that the judicial process is handled by the panel of judges</p>	<p>Provisions in article 50</p> <p>(1) The Cassation Judge checks and decides the child case in the mandatory cassation level with the panel of judges.</p>

	(2) The Chair of the Supreme Court can determine the examination of child cases with the panel of judges in the case of a criminal offense that is threatened with imprisonment of 7 (seven) years or more or difficult to prove it.	(2) Subjective legal considerations, due to assembly deliberations and no one to argue (3) a single child judge is also a judge who hears other criminal and civil cases	(2) Deleted (1)
	Provisions of article 52  (1) The head of the court is obliged to assign a judge or panel of judges to handle child cases no later than 3 (three) days after receiving the case file from the Public Prosecutor.		Provisions of article 52  (1) The head of a district court is obliged to establish a panel of judges to handle child cases no later than 3 (three) days after receiving the case file from the public prosecutor.

Based on the description above, the reconstruction of the judge's governance value that examines the perpetrators of child crime based on the value of justice is to realize judges who have juvenile justice certification and compulsory trials in the form of juvenile justice judges. With the existence of a child criminal justice certificate for judges who examine cases of child crime. It will get judges who are ready in various legal knowledge about the mental and soul of children in accordance with child development. So as to produce a court ruling that is truly fair not only according to the law but also according to the community to seek justice in general. In addition, with the execution of juvenile offenses carried out by judges who have had children's judicial certificates and carried out with a composition of judges. It is hoped that a court ruling that is truly in accordance with the sense of justice of the community is expected, because the decision-making process is produced through a panel discussion process panel of judges, which balances between law enforcement and legal protection both for children in conflict with the law, children who become victims, and children who are witnesses of criminal acts and the public in general.

## CONCLUSIONS

1. The implementation of the judge's governance in examining the perpetrators of crimes that occurred in the Banjarmasin District Court, Banjarbaru District Court, Martapura District Court, and the Pelaihari District Court that have occurred at this time has not been maximally in accordance with the provisions of the applicable legislation. From the initial process of the trial until the decision of a judge who conducts a child crime investigation does not yet have a juvenile justice certificate as a child judge, there are still children who are in conflict with the law who are not accompanied by legal counsel, community counselors, and even their parents or guardians .
2. Factors that influence the management of judges who examine child offenders are not currently based on fair value, these factors include applicable legislation, legal awareness, infrastructure, and existing law enforcement resources.
3. Reconstruction of judges' governance in examining child offenders based on the value of justice is that the judge must have a child justice judge certificate and must be tried in the form of a panel of judges. The legal reconstruction is to fix some provisions in Article 11 year 2012 concerning the Child Criminal Justice System, such as the provisions of Article 43 paragraph (1) concerning child judges in the district court must have a children's judicial judge certificate, provisions of Article 43 paragraph (3) regarding provisions if the examination is carried out by a judge who does not have a juvenile justice certificate then the decision is null and void. The provisions of Article 44 paragraph (1) concerning the examination of children's hearings in the district court must be carried out with the panel of judges, and paragraph (2) concerning the abolition of provisions on the examination of child cases with the panel of judges in the case of a criminal offense punishable by 7 (seven) years or more or difficult proof. The provisions of Article 47 paragraph (1) concerning the examination of cases of criminal offenses at the level of appeal are carried out by the panel of judges, and paragraph (2) concerning the abolition of provisions on the examination of child cases with the panel of judges in the case of a criminal offense punishable by 7 (seven) years or more proof or difficult. The provisions of Article 50 paragraph (1) concerning the examination of cases of child crimes at the level of cassation are carried out by the panel of judges, and paragraph (2) concerning the abolition of provisions on the examination of child cases with the panel of judges in the case of a criminal offense punishable by 7 (seven) years or more proof or difficult. Provisions of Article 52 paragraph (1) concerning the obligation of the head of the district court to issue a judicial panel that examines cases of child crimes within 3 (three) days after receiving the case file from the public prosecutor.

## REFERENCES

Bagir Manan, 2007, *Menjadi Hakim Yang Baik*, Jakarta, Varia Peradilan No. 255 Pebruari 2007

Barda Nawawi Arief, 1994, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Ananta, Semarang  
Bunadi Hidayat, 2014, *Pemidanaan Anak di Bawah Umur*, Bandung, Alumni,  
J.Van Kan dan J.H. Beekhuis, 1997, *Pengantar Ilmu Hukum*, Jakarta, Ghalia Indonesia  
M. Cherif Bassiouni, 1994, *The protection of Human Rights is the Administration of Criminal justice, a Compendium of United Nation Norms and Standards, collaboration with Alferd de Zayas*, Centre for Human Rights United Nation, New York  
Muladi, 1997, *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, UNDIP, Semarang  
Mulyana W. Kusumah, 1981, *Aneka Permasalahan dalam Ruang Lingkup Kriminologi*, Alumni, Bandung  
Zvonivir Separovic Paul, 1985, *Victimologi Studies at Victims*, Pravni Fakultet, Zagreb

Sri Endah Wahyuningsih  
Faculty of Law, Unissula Semarang Indonesia  
Email: [endah.w@unissula.ac.id](mailto:endah.w@unissula.ac.id)

Abdul hamid  
Doctoral Program in Law Science, Faculty of Law,  
Unissula Semarang Indonesia

Gunarto  
Faculty of Law, Unissula Semarang Indonesia  
Email: [gunarto@unissula.ac.id](mailto:gunarto@unissula.ac.id)