

PROTECTION OF CHILDREN AS WITNESS AND VICTIMS OF CRIMINAL ACTIONS IN LEGAL REGULATIONS

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Abstract

Efforts to protect witnesses and victims are things that are done to expedite the criminal justice process. In cases where there are victims and witnesses, in this case children, a legal regulation is needed that specifically regulates this. In this case, if a child is placed as a witness in the criminal justice process to expedite the course of criminal justice, of course, it must be realized by Law Number 35 of 2014 concerning the Juvenile Criminal Justice System. These legal regulations place rights, obligations, institutions, and matters relating to children when they are in a criminal incident. This is also a mandate and also a form of ratification of the Beijing Rules and also the 1945 Constitution. Specifically in the legal regulations, restorative justice is placed as an alternative settlement of criminal cases against children, namely in the form of diversion. As the settlement of criminal imposition is a last resort, this applies to children's cases. For this reason, the placement of children as witnesses and victims in statutory regulations requires special action so that in reality in society and the legal regulations that are made can have synchronization.

Keywords: children, legal regulations, children's rights, diversion, restorative justice, diversion.

1. INTRODUCTION

Regulations for the protection of witnesses and victims have been regulated in the applicable laws and regulations in Indonesia. The drafting of a regulation to protect witnesses and victims is intended to position victims and witnesses to work together in the process of seeking justice through litigation in court. Nevertheless, the source of applicable law regarding the Protection of Witnesses and Victims is regulated in more than 1 (one) applicable regulation.

This is an effort so that victims and witnesses can have equal rights and be understood as someone who is seeking justice for himself, so that the rights of victims

and witnesses are a consideration in sentencing criminals for perpetrators. According to Article 1 paragraph 1 of Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, it is explained that a witness is a person who hears, sees, or experiences a crime himself and can provide information for the purposes of investigation, investigation, prosecution and examination in court.

According to the Criminal Code (KUHP), the position of the victim is not explicitly regulated. However, the position of the victim as a witness is explained in Article 184 of the Criminal Code, explaining that a witness is a person who can provide information for the purposes of investigation, prosecution, and trial regarding a criminal case that he heard about, saw for himself and experienced for himself. However, this is inversely proportional to the rights of perpetrators which are more discussed in the Criminal Code, while the rights of victims still receive less attention.

Based on the principle of equality before the law, explaining the protection of witnesses and victims refers to five principles, namely: respect for human dignity; sense of security; justice; not discrimination; and legal certainty to provide a sense of security for witnesses and victims in every criminal justice process. Through the regulation of laws and regulations in force in Indonesia, a legal framework was formed that functions to specifically regulate the protection of witnesses and victims. So that the role of the victim in the criminal justice system can function as valid evidence in the examination of criminal cases.

Judging from the principle of equality before the law that has been explained. This means that every individual has the right to receive legal protection based on the principles of the rule of law. of course, this refers to the sense of justice which is also reflected in Pancasila, namely social justice for all Indonesian people. As well as a statement in the Universal Declaration of Human Rights (DUHAM), which explains that "all people are equal before the law and are entitled to the same legal protection without discrimination. All are entitled to equal protection against any form of discrimination contrary to this Declaration and against any incitement to discrimination.

Even though the position of witnesses and victims has been specifically regulated in Law Number 31 of 2014, until a Witness and Victim Protection Agency (LPSK) was established. It should be understood that the position of witnesses and

victims has not yet obtained an inadequate position. This is inversely proportional, in which perpetrators tend to obtain many rights, and victims who are also witnesses sometimes feel cornered when giving testimony.

What if the victim who is also a witness is a child who is not yet legally capable? Of course, the testimony of the witness, in this case the child, also needs to be taken into consideration. The goal is that in imposing a sentence, an appropriate decision can be made and becomes material for the judge's consideration in deciding the case. This means that it also needs to be facilitated if there are criminal cases or incidents that place children as witnesses and victims of criminal acts. Of course, for legal events that occur, the role of children as witnesses and victims is also considered important and requires special protection in its application.

For this reason, based on the description that has been presented, the problems to be examined are listed, namely the role of legal regulations governing the protection of children as witnesses and victims, a more detailed explanation is needed and becomes the background that forms the problem formulation in this article. In addition, the urgency of obtaining children's rights in providing information as a witness in the judicial process needs to be explained in more depth to find out the extent of the role and rights of children in the judicial process and the nature of the information given.

The use of data collection methods in this study is normative juridical research. Namely using a library research model or document study because it uses secondary legal data and materials. The procedure for processing this data begins with examining the data collectively by making connections between events that occur in the community and are associated with laws and regulations and legal materials so that this research is structured.

2. RESULTS AND DISCUSSION

The formation of a regulation to regulate people's behavior to be able to interact with other people in society and as a state is something that is under the authority of state institutions. Crime prevention policy efforts are a form of protection for society. This is in the opinion of Sudarto, namely:

- 1) Efforts to realize good regulations in accordance with the symptoms and situations in society;
- 2) Policies from the state through authorized bodies to establish the desired regulations are expected to be used to express what is contained in society and to achieve what is aspired to.

Of course, this is useful for the whole community, which in this case are children. Children need to receive the same protection and even more specifically when they are in a criminal incident where they become witnesses or victims. In this regard, different treatment needs to be applied so that children feel safe, and comfortable and receive protection so that the judicial process can run smoothly and justice can be upheld. The definition of a child based on the ILO Worst Forms of Child Labor Convention, explains that "the age of majority" is set at the age limit of 18 years. Meanwhile, Article 1 point 3 of Law Number 35 of 2014 concerning the Juvenile Criminal Justice System emphasizes that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime. Regarding the minimum age, a child is categorized as a naughty child

Likewise regulated in Law Number 39 of 1999 concerning Human Rights (HAM) describes children, namely every human being under 18 (eighteen) years old and unmarried, including children who are still in the womb if it is for his benefit. Human rights are also interpreted as the result of human struggle to maintain their dignity. Article 1 number 2 of Law Number 23 of 2003 concerning Child Protection states, "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow and develop and participate, optimally in accordance with human dignity and receive protection from violence and discrimination"

Regarding the age limit for children that has been explained, then when it is linked to Article 28B paragraph (2) of the 1945 Constitution which explains that every child has the right to survival, growth, and development and has the right to protection from violence and discrimination, the government has the responsibility to carry out its obligations as a human rights holder. This explains that children have the same rights even though they are not yet legally competent.

Then, when children who become perpetrators of criminal acts are initially regulated in the Beijing Rules Part two of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) states that each state party should make juvenile justice an integral part of the national development process of a country. This means that the state also places juvenile justice as a general court that regulates and adjudicates crimes committed by children by considering the rights and obligations of children as stipulated in Law Number 35 of 2014 concerning SPPA.

Regarding the protection of children who commit crimes, the KHA also regulates several matters related to situations where a child is in conflict with the law. This is regulated in Article 37 of the CRC, that the guarantees that must be given by states parties to the CRC for children are such as the prohibition of imposing the death penalty on children under the age of 18 who commit criminal acts; the use of imprisonment and other matters related to the deprivation of freedom of children in conflict with the law as a last resort and for the shortest period of time; If a child is forced to be deprived of his freedom due to a conflict with the law, it is necessary to separate him from the adults in his placement.¹

To fulfill legal certainty in accordance with established legal regulations. The ideals of law have a goal that must be realized public order and justice to be achieved by law administrators must be able to blend in with social processes in society. In this case, the main components are: the law must be able to provide certainty in orientation in society, and certainty in the application of law by law enforcers

¹ Ony Rosifany, 'Legal Provisions for the Criminal Act of Obscenity Against Minors According to the Child Protection Law', *Legality*, 5.2 (2021), 90 <<https://doi.org/10.31293/lg.v5i2.5112>>.

The Criminal Code recognizes victims as witnesses as regulated in Articles 185 and 186. In a state society, children who are perpetrators and victims have a special form of protection that is different from other perpetrators or victims. This can be seen in the different position status when it comes to children as witnesses in criminal cases regulated in Article 171 of the Criminal Code, namely "those who may be examined to give statements without an oath are":

- a. Children who are not yet fifteen years old and have never been married;
- b. People who are mentally ill or mentally ill, although sometimes their good memories come back.

Article 185 paragraph (7) of the Criminal Procedure Code states that the testimony of a witness who is not sworn in is not evidence, but if the statement is in accordance with the testimony of a witness who is sworn in, it can be used as additional legal evidence. However, according to the legislators, children cannot be perfectly accounted for in criminal law if they cannot take an oath or promise in giving information. Therefore, the testimony of child witnesses is only used as a guide or other valid evidence to add to the judge's conviction.²

In a normative way, a child's statement is not a legal instrument of evidence, but beforehand it is explained how to take into account the witness testimony and use witnesses who are not sworn in, in this case it turns out that the panel of judges considered that the statement of the child as a victim and child witness has a value of evidentiary power so that it creates a religious jury that has a stake in the decision handed down. In the jury's evaluation of the statements of the victim witnesses and child witnesses whether or not they can be used as evidence or the fulfillment of the physical and formal provisions of the child witnesses' statements, in practice these matters all depend on the jury examining and investigating the matter of the crime whether to use or override the child victim witness's statements.³

The testimony of the victim as a witness to the child's experience should be understood as valid evidence, not just a judge's consideration. Overseas, it is known as

² As Witnesses and others, . '. Master of Law in Postgraduate Program Muhammadiyah University of North Sumatra Info Article Keywords: Corresponding Author: Zepri Pandapotan Simamora The Criminal Procedure Code Provides Information for the Interests of Investigation, Investigators', 1482, 2022, 51–64.

³ As Witnesses and others,...

the Victim Impact Statement which explains the submission by the victim and/or the victim's family to the judge both orally and in writing regarding the information experienced by the victim of a crime. The Victim Impact Statement describes what happened to the victim as a result of the crime he experienced.

For this reason, various regulations have been established for the protection of witnesses and victims in protecting the rights of victims in order to expedite the trial process for the accused. The mandate given by law should be a preventive form that can be a deterrent or countermeasure when children become victims and witnesses of criminal acts.

For this reason, in facilitating the process of criminal justice stages from the investigation stage to a judicial decision, a witness who has experienced it himself, heard it himself, and seen a crime for himself is needed. Particularly in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 1 paragraph 4 emphasizes that children who are victims of crime, hereinafter referred to as child victims, are children who are not yet 18 (eighteen) years old who experience physical, mental and/or economic losses caused by criminal acts.

Explicitly, this is regulated in the SPPA Law prioritizing a restorative justice approach through a process of diversion. Diversion, namely all parties involved in a particular crime jointly solve the problem and create an obligation to make things better by involving victims, children, and the community in finding solutions to improve, reconcile and reassure the heart that is not based on retaliation.

Article 1 Number 1 Law Number 15 of 2020 explains the settlement of criminal cases involving perpetrators, victims, families of victims/perpetrators, and other related and joint parties to seek a fair solution by emphasizing restoration to all circumstances and not retaliation. In the settlement of cases, one of which is carried out in the form of a peace agreement and revocation of the right to sue, which requires a judge's decision through the public prosecutor to cancel the authority to sue.

Then to witnesses and victims, children have special treatment for children who violate the law, as a consequence of having special characteristics in children which are the embodiment of child protection as per the Child Protection Act. Protection in the investigation process for children who commit crimes committed by children is a form of special attention and treatment to protect the interests of children. This special

attention and treatment are in the form of legal protection so that children do not become victims of the wrong application of the law which can cause mental, physical, and social suffering.

The application of diversion is regulated in Article 6 of the SPPA Law. Diversion is the transfer of settlement of child cases from the criminal justice process to processes outside of criminal justice. In the SPPA Law, Diversion aims to:

- a. Achieve peace between the victim and the child;
- b. Resolve cases of children outside the judicial process;
- c. Prevent children from deprivation of independence;
- d. Encourage people to participate; And
- e. Instill a sense of responsibility to children.

The diversion can be implemented at the level of investigation, prosecution, and examination of child cases at the District Court. Article 8 of the SPPA Law explains that the Diversion Process is carried out through deliberations involving children and their parents/guardians, victims and/or parents/guardians, community counselors, and professional social workers based on a restorative justice approach.⁴

In this case, there is also a witness and victim protection agency. The characteristics of the tasks and work of the LPSK are institutional models that support the work of other institutions/institutions. The implications for the characteristics of the tasks and work cause the LPSK to be inseparable from the existence of several law enforcement agencies. Protection of witnesses and/or victims has an important role in the process of criminal cases. Testimony of witnesses and victims were given freely with fear and threats can make it difficult to disclose a crime that has occurred.⁵

According to Satjipto Rahardjo, in order for the law to be progressive, the law must be able to liberate, namely based on the principle that law is for humans, not vice

⁴ Darmi, Rosmi, 'Implementation of the Convention on the Rights of the Child Relating to the Protection of Children Against Legal Processes', *Journal of Legal Research De Jure*, 16.4 (2016), 439–50

⁵ April Yunus Laoly and Parnington Malau, 'Juridical Analysis of Legal Protection of Witnesses and Victims in the Perspective of Criminal Cases', *Yurispudentia: Journal of Economic Law*, 6.2 (2020), 165–88.

versa, and law does not exist for itself, but for something broader, namely human dignity, happiness, welfare, and human dignity. Judges can leave the formal procedural and carry out a substantial interpretation aimed at breaking through the impasse encountered by children as victims of criminal acts .⁶

For this reason, the Juvenile Criminal Justice System reports that children become witnesses and victims must obtain rehabilitation from medicine, and social services both inside and outside the agency. As in Article 10 paragraph 2 explains:

(2) The Diversion Agreement as referred to in paragraph (1) is carried out by the Investigator on the recommendation of the Community Advisor, which may take the form of a. compensation for losses in the event of a victim; b. medical and psychosocial rehabilitation; c. handover to parents/guardians; d. participation in education or training at an educational institution or LPKS for a maximum of 3 (three) months; or e. community service for a maximum of 3 (three) months.

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, and get protection from violence and discrimination, the implementation of child protection is the joint responsibility of the government (central government, provincial and district governments and city governments) and society (community organizations, community social institutions/NGOs, the business world and society in general, some thoughts that also need to be carried out so that acts of violence against children can be reduced as little as possible, including prevention of child violence, social advocacy, community empowerment, social assistance, and movement national child protection.⁷

Because various things that are elements of criminal acts are regulated in Law Number 35 of 2014 concerning child protection, it is understood that children can become victims as follows:

⁶ Niken Savitri, 'EVIDENCE IN THE CRIME OF SEXUAL VIOLENCE ON CHILDREN STUDY OF DECISION NUMBER 159/Pid.Sus/2014/PN.Kpg.', *Jurnal Bina Mulia Hukum*, 4.2 (2020), 276 <<https://doi.org/10.23920/jbmh.v4i2.323>>.

⁷ Uji Hartono, 'Violence and Child Protection', *Social Welfare Research Information Media*, 43.2 (2019), 177–86.

- a. Every person is a subjective element which means that there is an actor (a person who can be held responsible) who commits an act that can be punished according to this article.
- b. Deliberately It is a subjective element that comes from within the perpetrator, in which the perpetrator has done it consciously, understands, and really wants what he is doing.
- c. Execution of violence or threats of violence, coercion, deception, series of lies, or persuasion of children. Basically, this element is similar to the elements mentioned in Article 290 paragraph (3) of the Indonesian Criminal Code, namely acts of violence, coercion, a series of lies, deception, and inducements made to children with the intention that the child does something desired by the impostor.
- d. To commit or allow to commit obscene acts. This is the last element which is the main purpose of the perpetrator.

For this reason, there is a need for reform in legal regulations that are beneficial and in favor of witnesses and victims, especially children, because they are cultural successors and are carriers of new synergies for the country.⁸

3. CONCLUSION

Fulfillment of the right to feel safe to protect witnesses and victims is an important requirement in the legal process in court so that it can run smoothly. In this case, victims who are also witnesses who have fulfilled their capacity can be said to be witnesses, because they have their own knowledge based on what has been experienced, seen, and/or heard related to the alleged occurrence of a crime.

The regulations stipulated in statutory regulations are already very complex when considering the many rules governing the protection of witnesses and victims, and the existence of special laws regarding the Juvenile Criminal Justice System and the Juvenile Crime Law. Because the principle adopted is *lex specialis derogate legi generali*. The principle that explains the enactment of the Special Law rather than the General Law.

⁸ Savitri, Niken, 'EVIDENCE IN THE CRIME OF SEXUAL VIOLENCE ON CHILDREN STUDY OF DECISION NUMBER 159/Pid.Sus/2014/PN.Kpg.', *Jurnal Bina Mulia Hukum*, 4.2 (2020), 276 <<https://doi.org/10.23920/jbmh.v4i2.323>>

Against this fact, it is necessary to understand that judging from a progressive socio-society, the regulations that apply to children need to change. Increasing the existence of benefits and goals that are more focused on children so they can understand a sense of security and protection for children as victims and willing to be witnesses to expedite the trial process.

In SPPA, restorative justice through diversion is the best way to protect children from criminal justice prevention. In trying cases involving vulnerable groups, such as women, children or other vulnerable groups, judges as decision makers who make legal findings on a concrete legal issue are expected to be able to seek new breakthroughs in the form of interpretation or legal discovery that can accommodate substantial justice for justice seekers from vulnerable groups, by not only applying procedural justice which often does not fulfill the justice of vulnerable groups.

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