



Disparity of Sentencing in Violent Crimes Which Was Carried out by Child Defendant in the Jurisdiction of Padang Panjang District Court (Case Study: The Verdict of the Supreme Court No. 957 K/Pid.Sus/2020 and the Verdict of the Supreme Court No: 968 K/Pid.Sus/2020)

Tanti Thaher; Elwi Danil; Fadillah Sabri

Universitas Andalas, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v9i7.3908>

Abstract

Until now, criminal sentencing is still considered as the best solution in giving deterrent effect for the criminals, including for children who commit the felony. Based on several aspects, this criminal sentencing sometimes is not justified by adequate judicial consideration, including also the existence of unequal or unbalanced criminal convictions by judges, which is known as “*disparity of sentencing*”, as one of the forms an embodiment of independence discretion owned by a judge when they handle criminal cases. This disparity brings its own problems in law enforcement in Indonesia. As it happened in the case of the persecution that occurs in cases in Nurul Ikhlas Islamic Boarding Schools in 2019, it was discovered that one of the seventeen juveniles was given imprisonment on a trial, even though he played the minor role in the incident of the persecution, meanwhile the other sixteen juveniles were only given conditional sentences, even though they have more significant roles in causing the death of the victim. The type of the research in this thesis is juridical normative law research, by using secondary data in the form of related documents. The aims of the research are to reveal the basic consideration of the judges in passing the difference criminal decisions and the law consequences especially for the child defendant. It was found that, this disparity of sentencing is occurred not only because the subjective point of view of the judges (which are affected by the judge’s knowledge and the judge’s inaccuracy in examining the case), but also because of unimplemented of the Circular Letter of the Supreme Court No. 7/2012 about Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guideline for the Implementation of Duties for the Court, by the registrar young special crimes to the supreme court. The negative impacts of the application of this criminal disparity for the defendant is the emergence of the sense of unfairness treated by a judge, meanwhile for public community is bringing up a social jealousy of the community in judicial institutions, which are then be reflected in the form of indifference on law enforcement in the community. It is expected that supervision against the implementation of the Circular Letter of the Supreme Court No. 7/2012 could be more maximized, as to prevent the occurrence of disparity criminal sentences which might put the defendant as the lost party in law enforcement process.

Keywords: *Disparity of Sentencing; The Discretion; The Professional Freedom Principle of the Judges*

Background of Research

Based on Article 1 number 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law) explains that in the implementation of the juvenile criminal justice system, there are three categories of children classified as children in conflict with the law, namely children in conflict with the law, law, children who are victims of criminal acts and children who are witnesses of criminal acts. Children who are in conflict with the law as stipulated in Article 1 point 3 of the SPPA Law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime.

Children who commit crimes are not to be punished but must be given guidance and coaching, so that they can grow and develop as normal children who are healthy and fully intelligent. Sometimes children experience difficult situations that make them act against the law. However, children who violate the law do not deserve to be punished, let alone then put in prison. It is necessary to consider placing criminal sanctions in the settlement of children's cases as Van Bemmelen's opinion, the use of criminal law must be so strictly limited and must be considered as the last means (Ultimate Remedium) to resolve problems that occur in their territory.

Cases of violence or abuse committed by children that occurred at the Nurul Ikhlas Islamic Boarding School Padang Panjang in 2019, several children (santri) who were suspected of having committed criminal acts of persecution, namely Arjuna Aurelyan Adham, Hedwarsyah Syafri, Suhendra, M. Syadat Alfarizi, M. Farhan Hardians, Laurenza Bertranda Nindry which resulted in the death of the victim Rhobi Al Alim. The child as the perpetrator was brought to trial with a separate case file (splitzing), where Arjuna Aurelyan Adham with case number: 6/Pid.Sus/2019/PN-PDP while Hedwarsyah Syafri, Suhendra, M. Syadat Alfarizi, M. Farhan Hardians, Laurenza Bertranda Nindry's son with case number: 5/Pid.Sus/2019/PN-PDP

The separation of case files (splitzing) from the beginning at the investigation level was due to the difference in the level of roles between the children as perpetrators. In the decision of the Padang Panjang District Court Judge, Arjuna Aurelyan Adham, Hedwarsyah Syafri, Suhendra, M. Syadat Alfarizi, M. Farhan Hardians, and Laurenza Bertranda Nindry have been legally and convincingly proven guilty of committing a criminal act of allowing and participating in violence against children who which is carried out continuously so that the child dies. as in the provisions of Article 80 Paragraph (3) Juncto Article 76 C of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended and supplemented by Law Number 17 of 2016 concerning Stipulation of Government Regulations In lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2012 concerning Child Protection in conjunction with Article 64 of the Criminal Code in conjunction with Law of the Republic of Indonesia No. 11 of 2012 concerning the Juvenile Criminal Justice System and imposed a prison sentence with a probationary period (conditional punishment). Upon the decision of the Padang Panjang District Court judge, the Public Prosecutor made an appeal. The judge of the Padang High Court on appeal in his decision stated that he had upheld the previous Padang Panjang District Court's decision.

While at the cassation level, for the case of An. Hedwarsyah Syafri and friends based on the Supreme Court Decision Number: 968 K/Pid.Sus/2020 dated 27 April 2020 stated that they had strengthened the judge's decision at the Padang High Court (appeal). However, for the case of Arjuna Aurelyan Adham based on the Supreme Court Decision Number: 957K/Pid.Sus/2020 dated May 19, 2020, it stated that it had corrected the decision of the Padang High Court regarding the sentence imposed on a child to be sentenced to imprisonment for 3 (three) months at the Child Special Guidance Institution (LPKA).) and Job Training for 3 (three) months. From the description above, it can be seen that there are differences in the imposition of criminal sanctions (disparity) in the case of children that occurred at the Nurul Ikhlas Islamic Boarding School Padang Panjang by the judge at the cassation level.

The disparity in sentencing by judges will certainly have an unfavorable effect that can injure the sense of justice for both victims, perpetrators and the community. This disparity in sentencing will also affect the public's perspective and assessment of the judicial process which is considered unfair, because the judge's decision is the crown as well as the peak of reflection of the values of justice, essential truth and the protection of human rights. Thus, disparity brings its own problems in law enforcement in Indonesia. On the one hand, different punishments or criminal disparities are a form of judge's discretion in making decisions, but on the other hand, these different punishments or criminal disparities also bring dissatisfaction for both victims, perpetrators and even society in general. The word "disparity" (disparity) itself etymologically means "different". According to Muladi, disparity is the application of a crime (disparity of sentencing) in this case is the application of a crime that is not the same (same offense) or against a crime whose dangerous nature can be compared without a clear basis for giving.

Meanwhile, according to Munir Fuady, disparity in punishment is the imposition of different crimes from one another even though the criminal acts are the same and the articles applied are the same. Along with Munir Fuady's opinion, Harkristuti Harkrisnowo argues that criminal disparity can occur in several categories, namely:

1. Disparities between the same crime.
2. Disparities between crimes that have the same seriousness.
3. Criminal disparity imposed by a panel of judges.
4. The disparity of punishments imposed by different panel of judges for the same crime.

In the example of the case raised in this paper, based on the facts revealed at the trial, violence or abuse of the victim's child was carried out by several children (santri) of the Nurul Ikhlas Islamic Boarding School Padang Panjang indeed carried out together, but their respective roles children have differences. It was revealed that Arjuna Aurelyan Adham's son only hit the victim once on the first day, but the child perpetrators in the case file An. Hedwarsyah Syafri, et al are known to have repeatedly used violence, some were beaten using their bare hands or using other tools, such as using flip-flops (swallows), broomsticks and some even wearing mountain shoes. Whereas the judge in his decision firmly stated that the actions of the children had fulfilled the elements of the act as stipulated in Article 80 Paragraph (3) Juncto Article 76 C of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Protection Children as amended and supplemented by Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2012 concerning Child Protection in conjunction with Article 64 of the Criminal Code in conjunction with the Law of the Republic of Indonesia No. 11 of 2012 concerning the Juvenile Criminal Justice System, namely placing, allowing to do, ordering to do or participate in committing violence against children resulting in death. This also illustrates that the act was carried out by more than one person which is called participation or participation (*deelneming*).

The disparity of criminal decisions handed down by judges in the persecution case, in fact has a negative impact that injures the sense of justice. In this case, Arjuna Aurelyan Adham feels aggrieved by the judge's decision, considering his relatively small role in the violent crime committed. Meanwhile, Hedwarsyah Syafri and other children (perpetrators) who had a more dominant and heaviest role in carrying out violence or mistreatment of the victim Rhobi Al Halim, were given a lighter decision. In addition, the public's sense of dissatisfaction as a seeker of justice ultimately leads to the loss of public confidence in the criminal justice system.

This law enforcement is felt to be inconsistent with what is mandated in Article 3 letter h of the SPPA Law which states that every child in the criminal justice process has the right to obtain justice before an objective and impartial juvenile court and obtain other rights in accordance with the provisions

of the legislation. In line with that, Law Number 48 of 2009 concerning Judicial Power states that judges are obliged to explore, follow and understand legal values and a sense of justice that live in society. The judge is also obliged to consider the nature of good and evil in the defendant (Children in conflict with the law).

Based on the description above, the authors are interested in further explaining in writing this journal with the title "Criminal Disparities IN VIOLENT CRIMINAL ACTS PERFORMED BY CHILDREN IN THE JURISDICTION OF THE PADANG PANJANG STATE COURT, Case study: Supreme Court Decision Number: 957 K/Pid. Sus/2020 and Supreme Court Decision Number: 968 K/Pid.Sus/2020.

Research Methods

The research used is normative juridical, namely research that refers to theories, doctrines, norms, and principles as well as legal rules contained in legislation and in court decisions. In this normative legal research, legal research is only aimed at written regulations so that this research is very closely related to the library because it will require secondary data from the library, or normative legal research can be limited to the use of document studies or library materials, namely on secondary data.

This research is descriptive analytical, which describes and describes as well as analyzes the facts through a case approach and legislation. This descriptive research is research that aims to describe something in a certain area and at a certain time, research that aims to provide data that is as accurate as possible about the situation that is the object of research, so that it will confirm hypotheses and can help strengthen old theories or make theories. New, on the disparity of punishment in violent crimes committed by children in the jurisdiction of the Padang Panjang District Court (Case study: Supreme Court Decision Number: 957 K/Pid.Sus/2020 on behalf of Arjuna Aurelyan Adham's child and Supreme Court Decision Number: 968 K/Pid.Sus/2020 on behalf of Hedwarsyah Syafri and friends).

Research Result

Based on the facts revealed at the trial, the Public Prosecutor demanded that 17 (seventeen) children (santri) of the Nurul Ikhlas Islamic Boarding School Padang Panjang be proven to have committed violence or abuse against the victim's child which resulted in the death of the victim's child as stipulated in Article 80 Paragraph (3) Juncto Article 76 C of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended and added to Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning Amendments Second, on Law Number 23 of 2012 concerning Child Protection in conjunction with Article 64 of the Criminal Code in conjunction with the Law of the Republic of Indonesia No. 11 of 2012 concerning the Juvenile Criminal Justice System, and placing children in the Budi Utama Lubuk Alung Social Welfare Organization (LPKS) for guidance.

That the chronology of the case described is in line with the facts revealed at the trial, namely that the role of Anak Arjuna who only kicked the victim's child in the pelvis/buttocks 1 (one) time on the first day of the incident was not as significant as the role of Anak Hedwarsyah Syafri, et al. The occurrence of the separation of case files (displitzing) from the start was also due to the difference in the level of roles between the perpetrators' children, however, to obtain a complete picture of the judge's considerations which led to the occurrence of sentencing disparities in the two decisions.

Based on the research and analysis described earlier, that the basis for the judge's consideration of making a decision containing criminal disparities in criminal acts of violence committed by children in the jurisdiction of the Padang Panjang District Court through the Supreme Court's decision Number: 957 K/Pid.Sus/2020 on behalf of Arjuna Aurelyan Adham are:

1. Because the judge's decision at the previous judicial level did not take into account the aggravating circumstances and the nature of the child's actions which brought fatal consequences, namely the death of the victim.

2. There is no peace between the child (perpetrator)/family and the victim/victim's family so that it is deemed less of a deterrent effect to both the child and society in general (specific and general preventive).
3. The appointment of a different judge by the Junior Registrar of Special Crimes of the Supreme Court against the splitzing case Number: 957 K/Pid.Sus/2020 and Number: 968 K/Pid.Sus/2020, has given rise to (punishment disparity) as a result of not implementing the provisions contained in in the Supreme Court Circular No. 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guide to the Implementation of Duties for the Court so that the basis for different judges' considerations appears as stated in each of the decisions of the juvenile case.
4. d. The judge's subjective factor itself is due to differences in knowledge and differences in the level of accuracy of judges in examining cases that ignore the facts revealed at trial, resulting in immature legal considerations.

That the legal consequences of the disparity in punishment in the Supreme Court's decision Number: 957 K/Pid.Sus/2020, where Arjuna's child must undergo imprisonment and job training at the Child Special Guidance Institute (LPKA), of course this decision is felt unfair to the child. Arjuna with his lightest role compared to other actors and handling cases took longer due to an error in the decision of the Supreme Court judge Number: 957 K/Pid.Sus/2020 so that the execution (implementation of court decisions that had permanent legal force) against children Arjuna was delayed until the issuance of the fatwa of the Supreme Court of the Republic of Indonesia Number: 893 / PAN / HK. 07 / 4 / 2021 on April 20, 2021.

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