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## **Implementation Of Criminal Decisions Against Children In Fighting The Law At Takengon District Court**

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### **Abstract**

*The punishment for a child is a special sentence imposed by a judge, apart from imprisonment, in the verdict that the sentence does not need to be carried out due to certain conditions. In the judge's ruling on juvenile punishment, it is stated in Law No. 11 of 2012. This research examines how judges consider sentencing children in conflict with the law at the Takengon District Court in cases with the same circumstances but different verdicts. In this research writing, the researcher uses the normative legal research method, which is an approach based on primary legal materials by examining theories, concepts, legal principles, and regulations related to this research. This approach is also known as the library approach, where the researcher studies the judge's considerations in criminal decisions against children in the same case. The result of this research is that the legal basis for conditional sentences and imprisonment for children has been regulated in the Child Criminal Justice System Law No. 11 of 2012, which states all procedures for handling juvenile criminal cases from the investigation stage, guidance, until the completion of the sentence. As for the legal reasons behind the judge's decision, conditional sentences and prison sentences must be reviewed from several aspects, such as social and economic factors that can influence the judge's considerations, including supporting facilities.*

**Keywords:** *Criminal Justice, Decision, Juvenile*

### **Introduction**

A crime is a human act that is contrary to the law, threatened with punishment by law, which act is carried out by a person who can be held responsible and can be blamed on the perpetrator. Considering the definition above, there are several requirements to determine the act as a crime, these requirements are as follow:

1. There must be a human act
2. The human act is contrary the law
3. The act is prohibited by law and is punishable by criminal law
4. The act is carried out by a person who can be held responsi

#### 5. The act must be accountable to the perpetrator<sup>1</sup>

Criminal act basically tend to look behavior or action (which result in) prohibited by law. In article 10 of the Criminal Code, criminal penalties consist of the death penalty, confiscation of certain goods, announcement of the judge decision.

In Central Aceh regency, there are several cases of criminal acts committed by child perpetrators, but in several cases the judges impose different criminal sentences on children. In the trial, the judges do give different decisions in each case, some cases are decided with (Conditional Sentences) where the convict has been decided to serve his sentence but is not placed in a correctional institution, but if the convict violates the probation period, he will send to a correctional institution without a trial first to serve his sentence. There are also judges who give decisions that the child perpetrator must serve a sentence according to the decision made by the judge (prison sentence).

The judge's decision must be able to provide a deterrent effect for perpetrators of criminal acts so that in the future no one will commit a crime and provide education so that others do not the same thing. A judge in making a decision must be based on applicable laws and facts found in the examination process.

The existence of a prison sentence and a conditional sentence shows that the judge does not only use imprisonment as retaliation or to improve the behavior of the perpetrator of the crime committed by the child, this proves that criminal law is not rigid and makes conditional sentences an alternative punishment in the present and in the future.

The author as a researcher also wants to explore and review further the different decisions with the same case against child perpetrators in the jurisdiction of Central Aceh Regency.

## Method

This research method is a normative legal research method, namely an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as a literature approach where researchers examine the judge's considerations in criminal decisions against children in

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<sup>1</sup>Rasyid Ariman dan Fahmi Raghil, *Hukum Pidana*, (Malang: Setara Press, 2016), hlm.60

the same case where there are different threats of punishment without looking at the facilities available in Central Aceh Regency.

## Discussion

### 1. Children in Conflict with the Law

The development of the history of human rights began with signing of the Magna Carta by King John Lackland in 1215. The charter contains protection, one of which protection for free men who may not be detained, imprisoned, exiled, or sentenced to death without legal consideration, and legal protection is carried out in writing through the courts, including children in conflict with the law whose rights must be protected as mandated by 1945 Constitution<sup>2</sup>.

Children are the next generation of the nation who can advance and become leaders in the future to achieve the nation's goals and actively participate in development in the future of the nation's struggle, also considering the ideals of children in the progress of their country. Children social life is also often in conflict due to juvenile delinquency which results in the child facing the law<sup>3</sup>.

Act 1 paragraph (2) of the SPA Law explains child face to face with law is child in conflict with law, become a victim of crime criminal, and witnesses act criminal<sup>4</sup>.

Harry E. Allen and Clifford E. Simmons explain that there are two categories behavior the child who made child must face to face with law, namely<sup>5</sup> :

1. Offense Status is behavior mischief child who when done by adults no considered as crimes, such as no according to, truant school, or blurry from house.
2. Juvenile Delinquency is behavior mischief child who when done by adults considered crime or violation law.

Based on explanation on children facing each other with law or child in conflict with law is those who are related directly with act criminal, good That as a victim or witness in an act

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<sup>2</sup> Mudfar Alianur, Nurlaila, alena, Implementasi Pelayanan Kesehatan Di Lembaga Pemasyarakatan Kelas II B Takengon, Jurnal Dusturiyah, Vol 12, Nomor 1 Tahun 2022

<sup>3</sup> Mahendra Ridwanul Ghomi, P Pujiyono, Perlindungan Hukum Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Implementasi Diversi Di Indonesia, Jurnal Pembangunan Hukum Indonesia, Volum 2, Nomor 3 Tahun 2020

<sup>4</sup> Muhammad Joni dan Zulchaina Z Tanamas, 1999, *Aspek Perlindungan Anak Dalam Perspektif Konvensi Hak Anak*, Bandung, PT Citra Aditya Bakti, hlm.83

<sup>5</sup> Harry E. Allen and Clifford E. Simmons dalam Purniati, Mamik, Sri Supatni, dan Ni Made Mertini Tinduk, 2003, *Analisa Situasi Sistem Peradilan Pidana Anak*, Jakarta, UNICEF, hlm 2

criminal. There are also differences from behavior or action oppose law children and adults who do not can be equated, where the act of committing child can just become an action oppose law, but for people mature that no is action oppose law, and on the contrary. There are several differences from children facing each other with law and perpetrators clear adult different is from aspect his punishment, according to Act 71 paragraph (1) of the SPPA Law is criminal main for children facing each other with law that is:

- a. Criminal warning;
- b. Criminal with condition:
  - 1). External coaching institution;
  - 2). Service society;
  - 3). Supervision
- c. Training Work;
- d. Coaching in institutions;
- e. Prison<sup>6</sup>.

Different with the Criminal Code, criminal the subject mentioned in the Criminal Code Act 10, namely: criminal dead, criminal prison, imprisonment, and fines.

Difference between ABH and perpetrator mature This seen in punishment, the perpetrator mature punishment dead is criminal final for perpetrator adults, while child is prison even then for as choice last and not allowed punishment dead/prison lifelong life.

Difference others are also available in the trial process, to child in detention process in the process of investigation, prosecution and trial relatively more short compared to adults. Besides that during this process ABH must also always accompanied by parents/guardians, Bapas, Peksos, and other parties related others.

Different with adults only get right accompanied by power of attorney law or get help law. Trial process for ABH it is also different with adults, the trial process in court the judge's son is not allowed using toga and attributes officialdom. Different with adults where the judge wears a toga during the trial process. The trial process for child must done with hearing closed for general, different with adult convicts whose trial open for general. In matter this researcher see that child nope become subject can sentenced punishment but can get guidance and

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<sup>6</sup> Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak

counseling, so that capable increase a normal child who is healthy and intelligent completely. Children as candidate generation successor a nation that is still in growth period physical and mental. Sometimes child experience situation difficult to make it do action against law. Although, it is the child who violates it law, is not worthy for punished especially Then entered in prison <sup>7</sup>.

## **2. Implementation Judge's Decision**

Based on the results of this study, judges have a legal basis for issuing criminal decisions based on the Criminal Code, Law on Child Protection and Child Protection. with condition one form punishment existing tree for perpetrator child. Criminal main in Act 71 paragraph 1 states a number of type punishment with condition there is three form that is mentoring, community service supervision. Conditional punishment is also contained in Act 73 of the criminal law with conditions that can only be given if the child defendant is sentenced to a maximum of 2 years in prison by the judge, if it has been proven to have significantly committed a crime, it will be decided , for example, sentenced to 2 years, 1 year 6 months, 2 years, or even several months, it can be subject to conditional punishment.

So Conditional punishment is also mentioned after which the person can be released from carrying out the sentence with general and special provisions which must be stated in the decision. Provisions In general, this means that the defendant has not committed another crime for several years, for example, a prison sentence of one year, the defendant may not serve the criminal sentence if the probation period is more than one year, for example, if the defendant has not committed a crime for 1 year and 6 months, the defendant may not to serve the sentence, but if during the probationary period the defendant is proven to have committed a crime, he can be put in prison afterwards by another judge later and there are special conditions. The special conditions are also determined for example committing or not committing a crime, the special conditions are not allowed to smoke for example how long or he is not allowed to drive a motor vehicle so there are provisions in act 71 and 73 to paragraph 8 which are the main legal basis. The reason why the judge gave this sentence for the perpetrator is a child with see from

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<sup>7</sup> Zulfikar Judge, Kedudukan Anak Yang Berhadapan Dengan Hukum Selaku Pelaku Tindak Pidana (Studi Kasus 123/PID.SUS.PN.JKT.TIM), jurnal Lex Jurnalica, Volum 13, Nomor 3 Tahun 2016

background behind come out ga, heavy t-light the act of committing for example action steal namely b thing was stolen and what was the reason for stealing the item .

Judges have the same considerations as other criminals, namely that in determining the punishment there are several things that must be considered, for example, the reason someone commits a crime, because someone does not always commit a crime because he is evil, it could be because of other things, that could also be our consideration that the judge can not put him in prison, but there are other punishments that could be better than prison. Then there are also other considerations, for example, the perpetrator has a reason. If in the decision, the mitigating and aggravating factors must be stated into the darkness verdict. Can mitigating factors, for example, someone has never committed a crime before, behaves well because the parents are also present in the trial , the judge can also see the results of the research from the social workers of the social services that in the child's decision there must be the results of the social workers' research on how the child behaved previously, then also recommendations from the social workers such as whether the recommendation is to imprison or not to imprison or for example the social workers recommend becoming a member of the community, then it can also be included in in Islamic boarding schools or schools and so on. This is a consideration for the judge to decide whether the child can be given a conditional sentence or not, the maximum sentence for the child is two years in prison and may not be more.

The decision given must of course be fair, because basically the judge to cut off a case no only for to drop punishment , but also give effect deterrent for example, the victim and the perpetrator have forgiven each other and forgiven each other and already no there is problem between both sides, so justice from victim and perpetrator side can achieved in consideration judge. So, the judge saw from side not only from law just but must see also from victim side, environment, and prosecutor as prosecutor general too of course put forward matter.

The purpose of a conditional sentence is to give the perpetrator a deterrent effect, but it will come back again how implementation the punishment because many people who have not understand that criminal conditional. This It means perpetrator released, whereas the law also included in the law criminal but the perpetrator is a child, In imposing sentences, judges are not arbitrary to decide the meaning of it like reason the child to do something criminal, is there any provision general as well as special. Limiting the freedom of the perpetrator is one form of conditional criminal law, for example a perpetrator the child who violate provision criminal,

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prohibited from riding a motorbike for two years year, thing the cause freedom perpetrator limited, by limiting freedom it will certainly provide effect deterrent for the perpetrator, that's what was said as conditions, if the conditions fulfilled, that is the criminal punishment given, but if the conditions are met no fulfilled the perpetrator will enter prison again after serving a conditional sentence. Because the perpetrator is a child, a conditional criminal law is imposed so that society can accept children who have committed crimes and so that parents can better supervise the actions of children. So far, conditional criminal law certainly provides a deterrent effect on children, but it all comes back to each individual.

The verdict is the right of the public prosecutor, as well as the defendant to file a legal action, but the punishment given is not necessarily in accordance with what the prosecutor wants, what is clear is that the judge has implemented after the verdict was read that it is not yet legally binding, the prosecutor and the defendant still have time to reconsider, if the verdict is not satisfactory then the prosecutor and the defendant can file an appeal, namely the case will be re-examined and will be decided by the high court. If a child who has been given a conditional sentence commits the same crime again or another crime, the judge will ask the child again why he/she committed the crime again, the decision given will again be up to the judge handling the case.

The things that the judge takes into consideration when deciding on a conditional sentence are the child's desire and potential to correct his/her mistakes and continue his/her education, and then the perpetrator's motives. in his actions, for example, a reckless child steal a motorbike for transportation home the house that far away with no plans to sell the motorcycle. Type the sentence imposed by the judge depends on from which is seen based on the facts revealed at the trial. Mitigating circumstances include, for example, the child has never been convicted or committed a criminal act , the child admits to being honest about his actions , as well perpetrator under age that can improve his attitude and behavior, and regret it his actions and not repeat his actions or violate them provision criminal other.

In matter the judge's reasons for the prison sentence for perpetrator, the child has often repeat his actions are repeated and do not provide a deterrent effect. This is certainly a concern in society, so that based on Act 81 of the SPA Law, the perpetrator needs to be sentenced to prison with the aim of punishment maximum with the hope that children can change their attitudes and



behavior and can keep children away from bad social circles that can influence them to commit crimes in the future.

From the discussion above, it can also be explained the judge's considerations in the case of theft committed by a child, why the judge gave different decisions, namely conditional sentences and imprisonment in the same case, as follows:

**a. Conditional Verdict**

Based on Case Number (4/Pid.Sus-Anak/2021/PNTkn ) it was decided that perpetrator stated proven to have intentionally taken goods or stolen, the judge considered that the act was the perpetrator is a child who has harmed another party, namely the victim, which cannot be justified, but is needed under consideration type the right punishment so that perpetrator immediately change the fat and his behavior In order to become a useful child in the future, the judge assessed that the child had a great desire to correct his mistakes and can changed towards the positive in the future , looking at the statement from his family which stated that the perpetrator was a good child and diligent in helping his parents, which was in line with the opinion of the community counselor, so the judge did not agree what is in t which prosecutor is the perpetrator so that in prison, then the judge sees the potential for self-improvement from the child and the continuation of the child's education, then the judge gives the opportunity for child perpetrators to be more useful in the future , so that the decision given is criminal conditional .

Considering that the Juvenile Justice System Law Act 71 explains the various criminal acts committed children, different from the Criminal Code with the aim that judges can give punishment to children that is in accordance with the best needs of the perpetrator and not just the punishment imposed is imprisonment, the judge agrees with the recommendations of community research regarding conditional sentences, regarding special conditions the judge considers based on the legal facts in the trial, the motive for the child to commit a criminal act or the child's goal in stealing the victim's motorbike was to drive it and use it as a means of transportation to the child's parents' house in Takengon, even though considering that the child was not yet 17 years old, the judge considered that the child should not have a driving license was not ready. to be able to drive a motor vehicle which resulted in the child falling and damaging the victim's motorbike which had been stolen, therefore it is appropriate if the special condition given to the child is not to drive any type of motorized vehicle until the time to be determined as stated in the verdict.



## **b. Prison Sentence**

Based on the Child case number (9/Pid.Sus-Anak/2020/PN Tkn) stated perpetrator the has violate or committing theft, from the assessment of the community guidance counselor, it was suggested that the child be placed in Banda Aceh Special Child Guidance Institution (LPKA). The community guidance officer and legal advisor from child perpetrators, begging consideration judges who aim to educate and guide the perpetrators so that aware as well as regret his actions which are stated in the Child Justice System Law which emphasizes the best protection for children, the continuity of their development children and deprivation of liberty and criminal punishment are the last resort.

In accordance with the provisions of Act 363 paragraph (2) of the Criminal Code in conjunction with the Law on Child Protection, the judge is of the opinion that the child's condition and actions constitute bad actions which have previously been carried out by the child repeatedly, such as stealing charity boxes and stealing other people's rickshaws, even though the child's other actions did not result in any punishment or dealings with law enforcement officers, so that the child needs to be given a prison sentence as a last resort in the hope that the child can change his attitude and behavior and can remove the child from his bad social environment.

From the discussion It can be concluded that cases of theft where the perpetrator is a child are not only carried out because of a crime, it could be that the child commits theft for the good of his family. Therefore, the judge can consider a conditional decision as well as a prison sentence. The judge decides on a prison sentence so that the child can change his attitude and behavior for the better. in the future and not repeat his actions again. Of all type existing punishment if the perpetrator child although repetitive the author also believes that it should remain enforced criminal conditional and the judge also sees facility his supporters in his jurisdiction so that the child the no separated far from his family.

## **Conclusion**

Legal basis implementation decision criminal to child has listed in Constitution System Justice Child Criminal Code Number 11 of 2012, in which the Judge gave decision criminal conditional No refer to from the Criminal Code. The Drop criminal as should be must consider provision the laws in force in Indonesia, because children facing each other law must protected

his rights. Therefore that's the judge in to cut off matter criminal children also see facilities available in its jurisdiction for example, the Children's Correctional Institution or LPKA/LPKS dj lower ministry social.

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