

## **The Power of Proof of Child Witnesses in Criminal Procedure**

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### ***ABSTRACT***

Criminal offense cases nowadays not only involve adults, but also involve minors whether it is as a victim, witness, or perpetrator. In its strength of proof, the minor child witnesses do not have strong proof strength because of their labile attitude and thinking. The large number of crime cases involving children and in a court judgment to be discussed in this study shows that only one witness saw, and heard directly a crime, where the witness was still classified as a child and was the consideration of the assembly per team of judges in deciding. The first issue, how is the power of a child witness under the provisions of the statute. The research method adopted in this study is normative jurisprudence with Statute Approach (Statue Approach), collection materials of legal materials using Library Studies. The legal regulations governing child witnesses are Article 171 Paragraph (1), Article 185 Paragraph (7), Article 161 Paragraph (2) of the Code of Criminal Procedure, and Article 1 Number (5) of Law No. Criminal Event Law Act statements given by a child witness although by other witnesses are not considered to be valid evidentiary instruments shall however be admissible as clues and additional other valid instruments of evidence.

Keywords: Adult Witness, Child Witness, evidence, criminal

### **Introduction**

Criminal acts can occur in various forms in this modern era, and the more advanced a country is, the greater the possibility of criminal acts occurring in that country. It is undeniable that criminal acts today also involve minors, whether as perpetrators, victims, or witnesses. This is because minors are the weakest and most vulnerable group to become perpetrators or victims of criminal acts today. According to data from the Directorate General of Corrections, Ministry of Law and Human Rights, in the period 2020 to August 26, 2023, almost 2,000 children were recorded as

conflicting with the law. As many as 1,467 of them have the status of prisoners and are still undergoing the court process.<sup>1</sup>

With the increasing level of underage crime, of course, some evidentiary processes also involve underage children as witnesses to the crime. Considering that underage children are witnesses to the crime, their statements cannot be ignored, even though underage children have unstable natures, if the statements they provide are consistent and strengthen other evidence, then it can be considered as an indication and strengthen the judge's belief in making a decision, even though in delivering their statements they were not sworn in...

Speaking of the legal basis for criminal procedure, the updated Indonesian Regulation also known as *Het Herzeine Indlandsch Reglement* (HIR) became the basis for the implementation of criminal procedure law in Indonesia before the enactment of Law No. 8 of 1981 concerning Criminal Procedure Law. It can be seen that the recognition of human rights and equality before the law in the consideration of the letter of the Criminal Procedure Code, "That the Republic of Indonesia is a state of law based on the 1945 Constitution (UUD) which upholds Human Rights (HAM) and guarantees all citizens equal legal status and standing before the law and government and is obliged to uphold the law and government without exception."<sup>2</sup> Law No. 8 of 1981 concerning Criminal Procedure Law is a guideline in the implementation of criminal procedure law which must be followed and implemented by judges and prosecutors...

In criminal justice, finding the truth is not an easy task. In the process of proving in court, supporting facts are needed, not just the judge's belief. As is known, criminal law includes two aspects, namely formal criminal law and material criminal law. Formal criminal law is the basis used by law enforcement, formal criminal law regulates the mechanism for implementing criminal law, while material criminal law regulates criminal acts and sanctions applied to perpetrators of criminal acts. As has been regulated, to prove whether someone has committed a crime or not has been explained in detail in articles 183-189 of the Criminal Procedure Code. In the process of proof, the judge must see the evidence before making a decision on the parties in the case for a crime, it is stated in Article 183 of the Criminal Procedure Code: "The judge may not

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<sup>1</sup> Yohanes Advent Krisdamarjati. Meningkatkan kasus Anak Berkonflik Hukum, Alarm bagi Masyarakat dan Negara. Kompas. 29 Agustus 2023. h. I.

<sup>2</sup> Andi Hamzah. KUHP & KUHP Edisi Revisi. PT Rineka Cipta. Jakarta. 2016. h. 227

impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains the conviction that a crime occurred and that the defendant is guilty".

The evidence referred to in Article 183 has also been regulated in Article 184 of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions, and statements from the defendant. The information provided by witnesses has a vital role, not because it is seen from the level of truth and is prioritized in the order of evidence, but because witness statements are data provided by humans, therefore they cannot be equated with other evidence

However, sometimes in a crime witnessed or experienced by someone who is still a minor, then their rights must be considered whether as a witness or a victim. According to Arif Gosita, there are several children's rights that must be fought for, including children as victims and as witnesses, and the rights of children as witnesses are the right to have reports submitted paid attention to with responsive and sensitive follow-up..<sup>3</sup> In Law Number 11 of 2012 concerning the Child Criminal Justice System, Article 1 paragraph (5) states that a child who is a witness to a criminal act, hereinafter referred to as a Child Witness, is a child who is under 18 (eighteen) years of age who can provide information for investigation, prosecution, and examination in court regarding a criminal case.

## **Research Methods**

This research is a library research with the research approach used is the normative legal approach (statute approach) to examine the evidentiary power of child witnesses with adult witnesses according to laws and regulations, as well as their application in existing reality, the author also uses court decisions as secondary legal materials to review and explain related laws and regulations. Primary legal sources in this study include; Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 23 of 2002 concerning Child Protection, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Decision of the Menggala District Court Number: 242 / Pid.B / 2020 / PN Mgl.

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<sup>3</sup> Ratna Jayanti Suyono. Kekuatan Pembuktian Keterangan Saksi Anak Tanpa Sumpah Serta Pertimbangan Hakim Terkait Asas Minimum Pembuktian. Universitas Sebelas Maret. Jurnal Verstek Volume 5 Nomor 1. 2018, h.238

## **Research Results and Discussion**

### **Legal Regulations Governing Child Witnesses**

About children's rights to receive equal treatment before the law, this has been explained in the 1945 Constitution of the Republic of Indonesia as follows:

Article 28B paragraph (2) states:

“Every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination.”

And in Article 28D Paragraph (1) it states:

"Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law."

According to the Great Dictionary of the Indonesian Language, a child is a human being, either male or female, who is still small or not yet an adult. According to Bisma Siregar, the age limit for a child is set at 16 years and 18 years or at a certain age at which according to calculations at that age the child is no longer classified as a child, but is already classified as an adult.<sup>4</sup> Meanwhile, according to Marlina, it is concluded that a child is a human being who has not reached 18 years of age, including children who are still in the womb and are not yet married.<sup>5</sup>

Meanwhile, according to statutory regulations, the regulation and definition of children are codified as follows:

In Law Number 23 of 2002 concerning Child Protection, Article 1 point 1 states that:

"A child is a person aged (eighteen) 18 years, including a child who is still in the womb."

In Law Number 35 of 2014 concerning Child Protection it is stated: "A child is a person who is not yet (18) eighteen years old, including a child who is still in the womb."

According to Law Number 39 of 1999 concerning Human Rights, Article 1 point states:

"A child is every human being under the age of 18 (eighteen) years and unmarried, including a child who is still in the womb if this is in their interest."

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<sup>4</sup> Bisma Siregar. Telaah tentang Perlindungan Hukum terhadap Anak dan Wanita. Pusat Studi Kriminologi F.H. UII. Yogyakarta. 1986. h. 90

<sup>5</sup> Marlina. Peradilan Pidana Anak di Indonesia. Refika Aditama. Bandung. 2009. h. 21

In Government Regulation Number 78 of 2021 concerning Special Protection for Children, Article 1 Paragraph (1) stipulates that:

"In this Government Regulation, the following terms are defined as: 1. A child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb."

From the description above, we can understand that what is meant by a child is a person, either male or female, who is not yet 18 years old. And it is important to know that in proving a crime, witnesses have a very vital role for proof in court. And in criminal cases involving children as witnesses, namely children who know, see, and hear an incident of a crime that occurs. The laws and regulations have regulated this. In Law Number 8 of 1981 concerning Criminal Procedure Law, the following is explained in Article 1 Number 29: "Children's statements are statements given by a child about things that are needed to clarify a criminal case for examination in terms of and according to the methods regulated in this law."

From Article 1 Number 29 of the Criminal Procedure Code, it can be seen that what is meant by child testimony is the victim's child, the witness child, and the perpetrator's child who provide information to clarify a criminal case. However, who is meant by a child witness and what is the age limit for a child as a witness? And what is the validity of their testimony?

In Article 171 letter a of the Criminal Procedure Code, it is regulated as follows:

"Those who may be examined to provide testimony without an oath are children who are under fifteen years of age and have never been married."

In the explanation of Article 171 letter a of the Criminal Procedure Code, it can be seen that children who can provide testimony are those who are under 15 years of age and have not been married, and in the explanation, child witnesses are not sworn in because their testimony cannot be accounted for because the mind of a child is still unstable. In addition, the age limit for those referred to as child witnesses is also regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, in Article 1 Number (5):

"A child who becomes a witness to a criminal act is a child who is under eighteen (18) years of age who can provide information for investigation, prosecution, and examination in court regarding a case that he/she has heard, seen, and/or experienced himself/herself."

From the description of Article 171 letter of the Criminal Procedure Code and Article 1 Number (5) of the Child Protection Act there are differences, namely according to the Criminal Procedure Code the age limit for child witnesses is 15 years, while according

to the Child Protection Act, it is 18 years, so, in this case, the principle of *Lex Specialis Derogat Legi Generali* applies, namely special laws override or eliminate general laws, so the Child Protection Act specifically regulates the age of children as witnesses used, namely children who are not yet 18 years old to provide information for investigation, prosecution, and examination in court. However, the information provided by child witnesses cannot be considered valid evidence because they are not sworn in when providing information, so their information is only considered as an indication, this has been regulated in Article 185 paragraph (7) of the Criminal Procedure Code as follows: "Statements from witnesses who are not sworn in, even if they are consistent with each other, do not constitute evidence, however, if the statements are consistent with the statements from witnesses who are sworn in, they can be used as additional valid evidence."

Thus, the information given by a child cannot be used as valid evidence because the child witness in delivering his/her statement is not sworn in and the requirement to become a valid witness is that in delivering the statement he/she must be under oath. However, the information of a child witness can be used as a guide for other evidence and can be used to increase the judge's confidence in making a decision.

### **Differences in the Evidential Value of Child Witnesses and Adult Witnesses in the Decision of the Menggala District Court Number 242/Pid.B/2020/PN Menggala**

#### **Evidentiary Value of Child Witnesses**

Witness Anak Dimas Fikri Pratama, who in this case is one of the factual witnesses who saw and heard himself a murder process carried out by the Defendant Triyono bin Tarmoto with his partner Suyanto. Anak Dimas is the key in revealing this case, as Anak Dimas, who knew this incident directly, while the other A Charge witnesses only found out after the murder incident occurred, with the discovery of Ms. Menik's body, which was buried in a rubber plantation 500 meters behind her house. And after that, clues were found that the Defendant Triyono did it after Witness Agus Hidayat and Witness Agus Suwoko interrogated Witness Anak Dimas, who then found evidence of 2 cellphones suspected of belonging to Ms. Menik in the seat of the defendant's

motorbike.

In this trial, Anak Dimas was considered as an indication by the Panel of Judges by the Panel of Judges' considerations that the information provided by Anak Dimas was consistent and did not change during the examination process until the trial process, so that the Panel of Judges used the information from Anak Dimas as indicative evidence, this is based on Article 171 Paragraph letter (a) of the Criminal Procedure Code which reads;

"Those who may be examined to provide information without oath are:

a. children who are not yet fifteen years old and have never been married."

Article 185 Paragraph (7) of the Criminal Code:

"Statement from a witness who is not sworn in, even if it is consistent with the others, does not constitute evidence; however, if the statement is consistent with the statement from a witness who is sworn in, it can be used as additional valid evidence."

Article 161 Paragraph (2) of the Criminal Procedure Code: "If the time limit for the hostage-taking has passed and the witness or expert still does not want to be sworn in or make a promise, then the information that has been given is information that can strengthen the judge's conviction."

In the trial, it was also found that Witness Suyanto was involved in the murder of Ms. Menik after evidence was found in the form of 1 (one) silver-blue match with a picture used to burn the back of Ms. Menik's house, and this was supported by Witness Suyanto's confession when questioned by investigators, so that these facts strengthened Anak Dimas' statement stating Witness Suyanto's involvement in the incident which was then included in a different case file.

Based on the statements of the witnesses which were interrelated and supported by other evidence in the form of a post-mortem, instructions (Anak Dimas' statement) and the defendant's statement admitting his actions, the judge was convinced that the defendant was proven guilty of committing the crime of murder accompanied by other crimes, and sentenced him to 20 (twenty) years in prison.

### **Evidential Value of Adult Witnesses**

In the court decision, several A charge witnesses were sworn in: Witness Mulyono, Witness Samiyah, Witness Agus Hidayat, Witness Agus Suwoko, and Witness Didi. All witnesses stated that there was a fire at Mr. Didi's house and the murder of Ms. Menik. However, all the witnesses who were sworn in did not see the murder directly. The Panel of Judges considered that the statements of witnesses who

stand alone can be used as valid evidence if they are related to each other so that they can justify a certain incident (Article 18,3 Paragraph (3) of the Criminal Procedure Code). Although the witnesses who were sworn in did not see the incident directly, their statements were strengthened by the statement of Anak Dimas who was not sworn in which was considered as an indication because it was related to the statements of other witnesses who were sworn in, as well as from the defendant's confession who admitted to the murder. Thus, these witnesses were considered as valid evidence even though they did not see the incident directly, but because the statements they conveyed were related to each other and supported by indicative evidence and the defendant's statement who admitted to the act.

### **Conclusion**

The Criminal Procedure Code regulates in detail the law enforcement process, and in terms of proof, especially witness evidence, the Criminal Procedure Code regulates the formal and material requirements for witnesses. Information provided by children as witnesses cannot be used as valid evidence and can only be used as additional evidence (Article 185 Paragraph (7) of the Criminal Procedure Code), and children are also exempted from the obligation to swear an oath before giving their statement (Article 171 letter (a) of the Criminal Procedure Code), and if their statement is valid witness information, it can be used as an indication and can increase the judge's confidence in deciding the case (Article 161 Paragraph (2) of the Criminal Procedure Code).

Child witnesses in court proceedings are not sworn in considering their young age and unstable attitude, unlike witnesses who are over 18 years old who may give testimony under oath based on Article 1 Number 5 of the SPPA Law, however if the information provided by the child witness is by and related to other valid witnesses who are sworn in, then their information can be used to reveal the truth about a crime that occurred. And based on the decision of the Menggala District Court Number 242 / Pid.B / 2020 / PN Menggala, it can be concluded that the information from the child witness plays a fairly important role in finding the truth about the criminal case, because the one who saw the incident directly was the child witness who was supported by other evidence, so that the judge has the confidence to decide the case.



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