



Criminal Liability of Children as Perpetrators of Physical Violence

Puan Maharani^{1*}, Sunariyo²

^{1,2} Faculty of Law, Muhammadiyah Kalimantan Timur, Samarinda, Indonesia.

 : puanmaharani26@gmail.com

Corresponding Author*



Abstract

Cases of child abuse are increasingly in the public spotlight. In some cases, children can also be perpetrators of violence against other individuals. This phenomenon raises various questions related to legal responsibility, justice approaches, and appropriate treatment of children as perpetrators of criminal acts. This study aims to analyze the criminal responsibility of children as perpetrators of violence and how the Judge's considerations in sentencing in Decision Number 5 / Pid.Sus-Anak / 2022 / PN.Smr and Decision 10 / Pid.Sus-Anak / 2023 / PN.Bpp. This study uses a normative legal research method, with three data sources, namely primary, secondary, and tertiary. Data were obtained through literature study collection techniques, and a legislative approach method with qualitative descriptive analysis, and drawing conclusions using inductive and deductive methods. The results of this study indicate that both Decisions have considered the legal, social, and psychological aspects of children as perpetrators of criminal acts. However, there are several things that are not in line with the principles of child protection and the restorative justice approach mandated by the Child Criminal Justice System Law.

Keywords: Criminal Responsibility; Children; Violence.

Submitted: 2025-04-01

Revised: 2025-08-18

Accepted: 2025-08-18

Published: 2025-08-31

How To Cite: Puan Maharani, Sunariyo. "Criminal Liability of Children as Perpetrators of Physical Violence." BACARITA Law Journal 6 no. 1 (2025): 66-72. <https://doi.org/10.30598/bacarita.v6i1.18322>

Copyright © 2025 Author(s)



Creative Commons Attribution-NonCommercial 4.0 Internasional License

INTRODUCTION

Children are legal subjects who do not have legal capacity, so parents or guardians are obliged to protect and guide children, considering that parents or guardians have legal capacity¹. Physical, mental, and emotional development, children have limitations in understanding the law and the consequences of their actions. Therefore, the legal system must provide appropriate protection so that children can grow up well and not become victims or perpetrators of criminal acts.

The issue of violence against children is getting more and more attention, both as victims and perpetrators. Children who commit violent crimes often face legal dilemmas related to accountability and appropriate judicial methods. Juvenile criminal law in Indonesia, restorative justice approach takes precedence over repressive punishment. Law Number 11 of 2012 concerning the Child Criminal Justice System prioritizes diversion and rehabilitation as the main solution in handling the case of child offenders. However, the implementation of this law often encounters obstacles, especially in cases of severe violence that raise social demands for perpetrators to receive harsher punishments. Analyze the role of the state in enforcing the law against children who commit criminal acts and ensure that the protection

¹ Cik Marhayani, Anis Rindiani, Wijayono Hadi Sukrisno, Husni Thamrin, M. Imanuddin. "Analisa Yuridis Tentang Definisi Anak Dalam Hukum Positif di Indonesia". Jurnal Legalitas (JLE) 2, no. 2 (2024): 60-70. DOI: <https://doi.org/10.58819/jle.v2i2.122>

provided in accordance with the relevant children's rights is crucial in the context of child protection. The juvenile criminal justice system in Indonesia offers opportunities for rehabilitation, with sanctions that are not only harsh but also more emphasis on rehabilitation and training, with child protection as stipulated in the Convention on the Rights of the Child, which Indonesia has ratified². Cooperation between law enforcement officials, social institutions, and families is needed to create an environment that supports the rehabilitation of children, so that they can return to being good individuals and not repeat criminal acts in the future. A criminal act in the context of Islamic law, called *Jinayah*, in legal terms indicates a violation or criminal act³. *Jinayah* includes various forms of offense, including violence. Islam emphasizes a balance between punishment and rehabilitation with justice in mind for all parties. This principle is also seen in the juvenile criminal justice system in Indonesia, which seeks to strike a balance between child protection and victims' rights.

Imam Shafi'i argues that violence can be categorized as intentional, sometimes manifested as entirely intentional or similar to intentional. Deliberate actions produce consequences. For example, someone hits another person's skull repeatedly until their skull is swollen and cracked, exposing their bones. It is considered intentional if the blow does not cause a wound that exposes the bones. If a person throws pebbles so that they swell and the wound exposes their bones, this is considered a criminal act similar to intentional violence, because throwing pebbles often does not cause the wounds that expose the bones.⁴

The *Convention on the Rights of the Child* (CRC) which has been ratified by Indonesia has the principle that "all actions involving children, including in criminal justice proceedings, must consider the best interests of the child (*Best Interests of the Child*, this right protects children from treatment that is detrimental to their physical, mental, and emotional development". Children should be treated equally without discrimination based on race, religion, sex, social status, or other factors to ensure that children of all backgrounds are protected, including those facing the law. Children must not be victims of torture, physical punishment, or degrading treatment. The death penalty and life imprisonment should not be imposed on the child. And the Law on the Juvenile Criminal Justice System mandates the diversion process as the main step to resolve the case of children of criminal offenders.

However, in practice (*Das Sein*), there are various obstacles that make the implementation of these principles not optimal. The author compares two court decisions related to acts of violence in case Number: 5/Pid.Sus-Anak/2022/PN.Smr and Number 10/Pid.Sus-Anak/2023/PN.Bpp. In the first case, the perpetrator's son and his friend hit the victim until he was helpless, then his friend stabbed the victim and damaged the victim's motorcycle. Based on Article 170 paragraph (2) 1 of the Criminal Code, the defendant was found guilty and sentenced to 5 months of coaching, minus the detention period. The judge then sentenced him to 3 months of coaching at the Samarinda Social Welfare Implementation Institution. In the second case, the perpetrator's two children committed violence against the victim with bare hands and helmets. The prosecutor demanded a prison sentence of 1 year, in accordance with Article 170 paragraph (1) of the Criminal Code. The judge sentenced him to 8 months in prison and 2 months of job training, minus the period of

² United Nations, Convention on the Rights of the Child, Article 40, <https://www.ohchr.org/en/professional-interest/convention-rights-child>

³ Seva Maya Sari, *Fiqh Jinayah*, (Medan: UINSA, 2022), p. 1-2.

⁴ Ahmad Firdaus, "Analisis Fiqih Imam Syafi'i tentang Tindak Kekerasan dalam Perspektif Hukum Islam", *Jurnal Fiqih dan Hukum Islam* 1, no. 2 (2023): 58-59

detention. The difference in this verdict shows that there is a disparity in indictments and sanctions. The judge considers the legal, social, and factual aspects of the trial in imposing a sentence to achieve the goal of a fair sentence.

This study analyzes the criminal liability of children as perpetrators of acts of violence through a study of Decision Number 5/Pid.Sus-Anak/2022/PN.Smr and Decision Number: 10/Pid.Sus-Anak/2023/PN.Bpp. These two decisions show differences in indictments, sanctions, and the application of the principles of restorative justice. Therefore, this study aims to examine how the juvenile criminal justice system applies the principles of protection and accountability, as well as provide recommendations to improve the policy of juvenile criminal law in Indonesia to be fairer for all parties involved.

METHODS OF THE RESEARCH

This study uses a normative method with a qualitative approach through the *Statute Approach* to analyze the applicable legal regulations. The data sources in this study consist of primary legal materials, namely laws, court decisions, and laws and regulations that have binding legal force; secondary legal materials, in the form of literature, journals, and other research results that support the analysis of primary legal materials; and tertiary legal materials, namely legal dictionaries and encyclopedias that provide additional understanding. The data collection technique is carried out through library *research*, by collecting documents, literature, and various relevant legal sources, which are then systematically analyzed to understand the legal aspects that are the object of research.

RESULTS AND DISCUSSION

A. Criminal Liability of Children as Perpetrators of Violence Based on Decision Number: 5/Pid.Sus-Anak/2022/PN.Smr and Decision Number 10/Pid.Sus-Anak/2023/PN.Bpp.

The process of determining the weight of responsibility for violent crimes, of course, the judge has first examined how much of the role and mistakes committed by the perpetrator and the impact of his actions in a case. The judge should also consider the sentencing guidelines where the judge is obliged to consider the perpetrator's mistake, the motive for the purpose of the crime, the way to commit the crime, the perpetrator's inner attitude and the influence of the perpetrator's future, of course this guideline will help the judge in determining the severity of the crime and the sense of justice that will be imposed on a case.

Muhammad Nur Andi bin Rudiansyah (hereinafter referred to as Anak) was charged with a violent crime as stipulated in Article 170 paragraph (2) 1 of the Criminal Code. This case involved Anak and several of his friends who committed violence against the victim to cause injuries. The legal process of the child is completed in accordance with the rules in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The judge finally sentenced him to 3 months of coaching. The following authors describe the results of the reflection of the application of the Juvenile Criminal Justice System in this case in the following analysis: a) Diversion and Reasons Not Carried Out: Diversion is not applied because this case is classified as a serious crime, namely demolition that results in serious physical injury. This is in accordance with Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which limits diversion for crimes with criminal threats of more than 7 years. Although in accordance with the law, restorative justice through dialogue between perpetrators and victims has not been optimized; b)

Children's Right to Assistance and Fair Process: Children are accompanied by legal counsel and family during the legal process, in accordance with Article 23 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The trial is carried out by considering the psychological condition of the child, ensuring that his right to a fair process is fulfilled; c) Rehabilitation-Oriented Punishment: The judge sentenced him to 5 months of coaching at the Samarinda Social Welfare Institution, in accordance with Article 71 of Law Number 11 of 2012 concerning the Children's Criminal Justice System which prioritizes coaching over imprisonment. The effectiveness of rehabilitation depends on the programs provided at the Social Welfare Implementation Institution; d) Opportunities for Improving Restorative Justice: There is no mediation between the perpetrator and the victim, although Law Number 11 of 2012 concerning the Child Criminal Justice System Article 8 emphasizes settlement with a restorative approach. Mediation can increase the sense of justice for the victim and the social responsibility of the perpetrator.

The analysis of the verdict based on theory and law, in the elements of Article 170 paragraph (2) 1 of the Criminal Code has been proven, including acts of violence by children and their groups that cause physical injuries to the victim. The judge's decision was based on *visum et repertum* evidence, witness statements, and evidence. From the perspective of restorative justice, rehabilitation-based punishment is in accordance with the principles of the Child Criminal Justice System, but it is less than optimal in restoring the perpetrator-victim relationship. If it is associated with legal theory, legal accountability has been fulfilled, but the aspects of procedural and social justice can still be strengthened by mediation mechanisms. Overall, this ruling reflects a humanist approach to juvenile justice with a balance between punishment and rehabilitation. However, improvements in the application of restorative justice can increase satisfaction for all parties involved.

Case Number 10/Pid.Sus-Anak/2023/PN.Bpp, in this decision, describes the handling of child criminal cases involving Muhammad Ikhsan Nur Alfajar (Child I) and Ferdy Alias Gilang (Child II). Both were found guilty of committing violent crimes together as stipulated in Article 170 paragraph (1) of the Criminal Code and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The Panel of Judges sentenced him to eight months in prison and two months of job training which was carried out under the supervision of the Balikpapan City Social Service. This decision reflects the court's efforts in combining criminal sanctions with a child-oriented approach.

The decision of this case reflects the application of the principle of child protection in the criminal justice system, as stipulated in the Law on the Juvenile Criminal Justice System. Although the perpetrator's child remains legally responsible, the effectiveness of prison sentences in supporting restorative justice is still debated. This principle emphasizes conflict resolution through dialogue between perpetrators, victims, and the community for the restoration of relationships and the prevention of repeat crimes. 1) Legal Responsibility: The child of the perpetrator remains responsible for his actions, by fulfilling the elements of unlawful acts (physical violence), elements of guilt (intention/*dolus* or negligence), and legal consequences (physical injuries as evidenced by *visum et repertum*). The judge's decision to impose 8 months in prison and 2 months of job training shows that the child is considered capable of being held accountable for his actions, although this approach still needs to be reviewed because the Law on the Juvenile Criminal Justice System emphasizes rehabilitation rather than imprisonment. 2) Subjective and Objective Elements in Criminal Law: Juvenile crimes must meet subjective elements (awareness in committing violence,

even though he was drunk) and objective elements (physical violence with real consequences on the victim). In addition, Article 170 of the Criminal Code emphasizes that acts of violence committed jointly have an element of aggravation, which is considered by the judge in imposing the sentence. 3) Principles of Restorative Justice: The Law on the Juvenile Criminal Justice System emphasizes restorative justice that is oriented towards restoring relationships between the perpetrator, the victim, and the community, as well as the rehabilitation of the perpetrator's child to prevent the repetition of the crime. In this ruling, although the judge considers mitigating circumstances such as the perpetrator's remorse, the application of restorative justice is still not optimal. Prison sentences reflect less restorative spirit, while alternatives such as diversion, counseling, or mediation are more constructive in fostering the offender's child and improving relationships with the victim. 4) Child Protection in the Criminal Law System: The juvenile criminal justice system not only sanctions but also protects the rights of children as vulnerable individuals, in this ruling, the principle of child protection has been accommodated through legal assistance and social guidance. However, prison sanctions still need to be evaluated whether they are in accordance with the goals of child protection in Law Number 35 of 2014. A more humane approach, as mandated by the Child Criminal Justice System Law, should emphasize education and coaching as a form of protection for child offenders.

Comparisons with similar cases show different approaches to punishment. Decision Number 5 focuses more on rehabilitation with coaching at the Social Welfare Implementation Institution, while Decision Number 10 emphasizes the deterrent effect through prison sentences. Both are still less than optimal in implementing mediation as part of restorative justice. This disparity shows the need for improvements in the juvenile criminal justice system to emphasize the recovery of perpetrators and victims and prevent the recurrence of criminal acts.

B. Judge's Considerations in Sentencing Children as Perpetrators of Violence Based on Decision Number 5/Pid.Sus- Anak/2022/PN.Smr and 10/Pid.Sus-Anak/2023/PN.Bpp

The Panel of Judges considers based on the evidence information, experts, the defendant, legal information, and the judge's beliefs. Decision Number 5/Pid.Sus-Anak/2022/PN.Smr, in this decision confirms that Anak Muhammad Nur Andi Als Andi Andi Bin Rudiansyah is legally and convincingly guilty of committing a criminal act "in public jointly committing violence against humans", as stipulated in Article 170 paragraph (2) 1 of the Criminal Code. Elements of Article 170 paragraph (2) 1 of the Criminal Code that are Fulfilled: a) The element of "whose property": Refers to the subject of the law as the bearer of rights and obligations who are considered able to account for all his actions before the law, where Muhammad Nur Andi is the child as the subject of the law in this case, so that the element of "whose property" has been fulfilled; b) The element of "openly and forcefully using violence": The child and his friends beat victims 1 and 2, while the stabbing was carried out by another perpetrator (Person Search List); c) Element of "Causing injuries": Victim 1 suffered a stab wound in the abdomen and victim 2 suffered a wound in the thigh, according to the doctor's visum.

The defendant has legally committed a criminal act as charged in Article 170 paragraph (2) 1 of the Criminal Code and is able to account for the acts he has committed. Therefore, the Panel of Judges considers incriminating matters such as the child's actions that result in losses to the victim and mitigating matters such as the child being honest and polite in the trial, the child regretting his actions and the child and the victim have reconciled. Based on

these considerations, the Panel of Judges sentenced him to 3 months of coaching at the Samarinda Social Welfare Institution, taking into account the previous detention period.

Based on the results of the criminal analysis, the judge prioritizes a rehabilitative approach rather than a retributive approach, with the aim of improving the child's behavior and ensuring that he does not repeat the crime. This approach is in line with specific prevention principles, but justice for victims remains a concern, especially since the main perpetrator of the stabbing is still the Wanted Persons.

Decision Number 10/Pid.Sus-Anak/2023/PN.Bpp, in this decision the Panel of Judges proved the elements of Article 170 Paragraph (1) of the Criminal Code, namely: a) The Element of "Everyone": Muhammad Ikhsan Nur Alfajar's Child and Ferdy's Child as defendants meet the elements of the legal subject based on the appropriate identity in the indictment and healthy physical and mental condition; b) The element of "openly and with Joint Force Using Violence" Based on the facts of the trial, the children committed violence against the victim which resulted in injuries to the face and shifting teeth, as evidenced in the visum. This element was declared fulfilled because the acts of violence were carried out together. The defendant legally committed an act that violated the indictment mentioned according to Article 170 paragraph (1) of the Criminal Code and was able to account for his actions. So the Panel of Judges sentenced him to 8 months in prison and 2 months of job training by considering aggravating matters (public unrest, injuries to the victim) and mitigating (confession of guilt, remorse, having never been convicted).

Based on the Amar Decision Number: 5/Pid.Sus-Anak/2022/PN.Smr and 10/Pid.Sus-Anak/2023/PN.Bpp, there is a gap commonly called disparity in deciding the punishment for the same two cases, namely violent crimes: a) Letter of demand or Requisitor (P-42) by the Public Prosecutor which is used as evidence of indictment using evidence submitted at the court session along with the criminal charges; b) The elements in Article 170 Paragraph (1) and (2) of the Criminal Code that have been considered based on the Public Prosecutor's indictment. In these two decisions, the judge considers that the defendant is a minor or an adult, committed the crime alone or together, how many times have the defendants faced the law, as a result of what the defendant caused by his actions, the perpetrator and the victim reconciled and other mitigating and burdensome matters; c) Legal facts brought to court by the Public Prosecutor and the Defendant. The goal is to convince the judge before deciding the matter. The judge will review based on evidence that meets formal, material, evidentiary or even evidentiary strength standards. The result of the author's analysis of punishment is that this verdict reflects the application of absolute theory (punishment as retribution for the suffering of the victim), purpose theory (punishment as prevention and rehabilitation), and combined theory (integrating retribution and rehabilitation). Although there is an element of rehabilitation through job training, the effectiveness of long-term detention of children is questionable because it is contrary to the principles of the juvenile criminal justice system which emphasizes that detention should be a last resort and for as short a time as possible.

CONCLUSION

Child criminal liability is carried out by paying attention to the principles of child protection and restorative justice in accordance with the Law on the Child Criminal Justice System. The first verdict: the child was sentenced to three months of coaching at the Social Welfare Institution as a rehabilitation effort. However, the lack of a mediation mechanism

between the perpetrator and the victim makes the application of restorative justice less than optimal. The second verdict: the perpetrator was sentenced to eight months in prison and two months of job training. Although it aims to provide a deterrent and coaching effect, this punishment is not in line with the principles of the Child Criminal Justice System Law which emphasizes rehabilitation and makes prison a last resort. Both rulings are still not optimal in the application of restorative justice, especially in the aspect of rehabilitation and victim recovery, which creates disparities in the juvenile criminal justice system. The judge in both cases considers the legal, social, and psychological aspects of the child as the perpetrator. The first verdict: was chosen for the crime of coaching at the Social Welfare Implementation Institution because the child acted under the influence of the group, his involvement was relatively small, and he admitted his actions. This approach is considered more appropriate for child rehabilitation. On the other hand, in the second verdict, a short prison sentence was imposed accompanied by job training to provide a deterrent effect while equipping children with skills so that they can return to society. The judge considered that there was no reason to remove criminal responsibility, considering that the actions of the children had injured the victim and disturbed the community. In both cases, the judge balanced the best interests of the child and justice for the victim, so that the sanctions given were not only repressive but also corrective and educational.

REFERENCES

- Ahmad Firdaus, "Analisis Fiqih Imam Syafi'i tentang Tindak Kekerasan dalam Perspektif Hukum Islam", *Jurnal Fiqih dan Hukum Islam* 1, no. 2 (2023): 58-59.
- Cik Marhayani, Anis Rindiani, Wijayono Hadi Sukrisno, Husni Thamrin, M. Imanuddin. "Analisa Yuridis Tentang Definisi Anak Dalam Hukum Positif di Indonesia". *Jurnal Legalitas (JLE)* 2, no. 2 (2024): 60-70. DOI: <https://doi.org/10.58819/jle.v2i2.122>
- United Nations, Convention on the Rights of the Child, Article 40, <https://www.ohchr.org/en/professional-interest/convention-rights-child>
- Seva Maya Sari, *Fiqh Jinayah*, Medan: UINSA, 2022.