

## Juridical Analysis of Testimonies of Underage Children in Perspective of Criminal Procedures



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**ABSTRACT:** This research was conducted to find out how the position of minors as witnesses in criminal procedural law and how the legal protection of minors as witnesses in a criminal act. By using the normative juridical research method, it can be concluded: 1. The position of minors as witnesses according to the criminal procedure law is not a valid evidence, and also does not have the power of proof, but the information can be used to strengthen the judge's belief and can be used as a guide as stated is in the explanation. Therefore, the value of the information given without an oath is in agreement with the others. Not having the power of proof does not mean that it cannot be considered, however, the information can be used in addition to perfecting the strength of proof of valid evidence, for example, it can strengthen the judge's conviction or be used as a guide. Whereas in the criminal justice system, children recognize witnesses as child witnesses who explain that the witness is a child who hears, sees and experiences himself. 2. Legal protection for minors as witnesses of a criminal act is quite good and supports a reshuffle of thought to provide opportunities and confidence for children to be able to testify in court. Protection of child witnesses involves all parties related to child protection regarding the rights of child witnesses which are clearly regulated in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. Following are the provisions for child protection contained in other statutory provisions, namely Law no. 35 of 2014 concerning Child Protection, Law no. 22 of 2007 concerning the Elimination of Domestic Violence, Law no. 13 of 2006 concerning the Protection of Witnesses and Victims. Institutions related to the protection of child witnesses are carried out by the Witness and Victim Protection Agency and the Child Protection Commission as well as the Special Child Development Institute, the Temporary Child Placement Institution and the Social Welfare Organization.

**KEYWORDS:** Analysis, Children, Witness Statement, Witness Protection.

### INTRODUCTION

Law enforcement is one of the efforts to create order, security, and peace in society, whether it is an effort to prevent or eradicate or take action after a violation of the law. In ensuring the rule of law for the administration of state life, the law which is the legal basis for the steps and actions of law enforcement must be in accordance with the basic philosophy of the State. According to Article 183 of the Criminal Procedure Code (KUHP) it is stated that a judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has actually occurred and that the defendant is guilty of committing it. (Nur Afni, 2013) Thus, the function of evidence in evidence in court proceedings is very important, so we often hear that a crime without sufficient evidence cannot be punished with either a fine or imprisonment. Based on the provisions stipulated in Article 183 paragraph (1) of the Criminal Procedure Code (KUHP), one of the valid evidences is witness testimony. (Novelina, 2006)

Witness evidence is the main evidence in criminal cases. Almost all evidence of criminal cases always relies on examining witness statements in addition to other evidence, which is regulated in Article 184 paragraph (1) of the Criminal Procedure Code which limits that valid evidence is as follows: 1. Witness testimony; 2. Expert testimony; 3. Letters; 4. Instructions; and 5. The defendant's statement.

Furthermore, Article 184 paragraph (2) of the Criminal Procedure Code states that things that are generally known do not need to be proven. Understanding a witness is a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case which he has heard for himself, he has seen and experienced for himself, so witness testimony is one of the evidences in a criminal case in the form of testimony from a witness regarding a crime. criminal events

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that he heard for himself, he saw for himself and he experienced for himself by mentioning the reasons and his knowledge. (Nur Afni, 2013)

There are several provisions that must be fulfilled so that the provisions of a witness can be considered valid as evidence that has evidentiary power, among others: that before giving testimony, a witness must first take an oath or promise as stipulated in Article 160 paragraph (3) of the Criminal Procedure Code. The presence of a witness at the trial is nothing but to provide information related to the case being examined. Every witness is required to provide true information and nothing other than the truth in accordance with the pronouncement of the oath or promise he made. However, although the law requires a witness to provide true information, the law itself almost completely leaves its implementation to the moral awareness of the witness concerned. In the explanation of Article 159 paragraph (2) of the Criminal Procedure Code, it is explained that being a witness is one of the obligations of everyone. Therefore something that has been determined by law as an obligation must be fulfilled. The refusal of these obligations can be referred to as a crime and therefore subject to sanctions. (Novelina, 2006).

Thus, every person is obliged to be a witness if he sees, hears or experiences himself a criminal act that is being examined before a court session. If someone who will provide testimony as a witness is an adult according to the law and has met the requirements for the validity of a witness statement as evidence as regulated in the Criminal Procedure Code, then this does not pose a problem in proving a criminal case.

However, there are times when a criminal act or a criminal act that is suspected to have occurred has only been witnessed/experienced by a minor. Especially for a child who has seen, heard or experienced a criminal act by stating the reasons for his knowledge of the criminal act being examined, by law it is not actually prohibited to be a witness at a court hearing. They can testify without taking an oath. This is regulated in Article 171 point a of the Criminal Procedure Code. The Bogor Police will investigate the shooting case of Indra Kameswari's mother. Where his own son was the key witness to the shooting by his father Abdul Malik Aziz whose real name is Muhammad Akbar. "(The victim's child) will immediately be examined. Because the child is the key witness," said Head of Criminal Investigation Unit of the Bogor Police AKP Bimatoro Kurniawan, Wednesday, September 6 2017. The child saw firsthand when his mother was shot by his father. Indra Kameswari's son also reported the incident to his neighbors after the suspect left his house. Because the child is still a minor, the police will treat him specifically in the process of examining the shooting case against his biological mother by his own father. One of them is the assistance of a psychologist in the examination. "The special treatment was accompanied by a psychologist during the examination by the Indonesian Child Protection Commission (KPAI) because he was still a minor." This study discusses how the legal provisions for the position of minors as witnesses in criminal cases and how the analysis of legal protection for minors as witnesses in criminal acts.

### RESEARCH METHODS

The methodology in this legal research describes how the procedures for a legal research should be carried out. The type of research in this thesis is normative juridical. The normative juridical concept is a research conducted by reviewing and analyzing the substance of the legislation on the subject matter or legal issue in its consistency with existing principles. The problem approach used in writing this thesis is the statute approach, the conceptual approach and the case approach.

### DISCUSSION AND ANALYSIS

#### *Characteristics of the Position of Children as Witnesses according to the Criminal Procedure Code*

Evidence is the most important factor in the trial process because it is only by proving that the fate of the defendant is determined and only by proving a criminal act can a criminal sentence be imposed. (Andi Sofyan, 2012) Evidence is a provision that regulates evidence that is justified by law that can be used by judges as a means of proving the guilt of the accused. (Yahya Harahap, 2009). According to the Regulation of the National Police Chief Number 3 of 2008 concerning the Establishment of a Special Service Room and Procedures for Examination of Witnesses and/or Victims of Crime, the examination of witnesses and/or victims who are still children in the police (in the sense that they are still under the age of 18 years) is carried out in Special Service Room. The Special Service Room (RPK) is a safe and comfortable room specifically designated for witnesses and/or victims of criminal acts including criminal suspects consisting of women and children who deserve to be treated or require special treatment, and the case is being handled at the police station (Art. 1 point (2) Regulation of the National Police Chief).

Article 171 letter a of the Criminal Procedure Code, a child who is not yet 15 years old is taken without taking an oath. This causes the child to no longer be considered as valid evidence and does not have the power of proof because it does not have formal requirements. Meanwhile, in order for a child to be used as a child witness, it must meet the requirements. The extent to which the validity of the testimony of child witnesses has evidentiary value for the judge, returning to the judge's subjective assessment because the assessment of witness evidence is generally not binding, as well as the statements of child witnesses. It

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can be said that the evidence of witness testimony as legal evidence is free and imperfect and not decisive or binding. The judge is free to judge its perfection and correctness. There is no requirement for judges to accept the truth of every witness testimony, including child witnesses. Thus, the judge can receive or convey the testimony of a child witness if the child is giving witness testimony. Even though the child's statement (a statement without an oath) is not a valid evidence, nor does it have the power of proof, it can be used to strengthen the judge's conviction as referred to in Article 169 paragraph (2), and can be used as a guide as stated in Article 169 paragraph (2). In the explanation of Article 171 of the Criminal Procedure Code.

### ***Juvenile Criminal Justice System or Underage Witness***

Positive law in Indonesia by default does not regulate the definition of a child, but there are several laws and regulations that mention the definition of a child, namely:

#### **a. Criminal Code**

The Criminal Code (KUHP) does not explicitly define the definition of a child, but it can be found, among others, in Article 45 and Article 72 which use the age limit of 16 years.

#### **b. Code of Civil law**

Article 220 of the Civil Code (KUHPerdata), provides the definition of a child is a person who has not reached the age of 21 years and is not married. According to the article, all persons who are not yet 21 years of age and have never been married are considered legally incompetent. However, Civil Law guarantees basic rights from in the womb until the child is born.

#### **c. Law Number 4 of 1979 concerning Child Welfare**

Article 1 number 2 states that a child is someone who has not reached the age of 21 years and is not married. If a person has not reached the age of 21 years but he is already married, then he is no longer a child, but as an adult.

The juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law from the investigation stage to the guidance stage after undergoing a criminal process based on protection, justice, non-discrimination, the best interests of the child, respect for the child, the survival and development of the child, proportional, deprivation of liberty and punishment as a last resort and avoidance of retaliation (vide Article 1 point 1 and Article 2 of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. In the juvenile criminal justice system, children are children in conflict with the law, children who are victims and children who are witnesses in criminal acts. Children who are in conflict with the law are children who are 12 years old but not yet 18 years old who are suspected of committing a crime; Children who become victims are children who are not yet 18 (eighteen years old) who experience physical, mental suffering and or economic loss caused by a criminal act; A child who is a witness is a child who is not yet 18 (eighteen years old) who can provide information for the benefit of the legal process starting at the level of investigation, prosecution and trial regarding a criminal case that has been heard, seen and or experienced.

In the event that a criminal act is committed by a child before the age of 18 and is submitted to a court hearing after the child exceeds the age limit of 18 years but has not yet reached the age of 21, the child is still submitted to the juvenile court (Article 20 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Judicial System). Child Crime). Furthermore, in the event that a child under 12 years of age commits or is suspected of committing a criminal act, the investigator, community advisor, makes a decision to hand it over to the parent/guardian or to include him/her in educational programs, coaching at government agencies or social welfare organizing institutions that handle the social welfare sector. (Article 21 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in conjunction with, Article 67 of Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning the Implementation of Diversion and Handling of Children under 12 (Twelve Years Old).

In adult cases (aged 18 years and over) each level of examination does not need to be accompanied by a parent/guardian, but in cases where a child is in conflict with the law it is necessary to be accompanied by a parent/guardian. Protection should be given since the criminal justice process begins. The criminal justice process is a juridical process, where there must be an opportunity for people to discuss, fight for certain positions, express interests by various parties, consider them and where the decisions taken have certain motivations. So that when the proof stage is needed evidence that meets both material and formal requirements so that the judge's conviction is formed which is one of the considerations in making a decision.

### ***The Position of Child Witnesses in the Juvenile Criminal Justice System Act***

Protection of children who are witnesses in the criminal justice process cannot be separated from the legal context of child protection. The law which is the highest rule must be followed by the community in carrying out social interactions, and also the state authorities as the organizers of state and community life. Law as concepts, ideas, and social ideals that are inherently inherent are the radiance of a value system that lives in the hearts of people. Law rests on the social base where it grows, applies and develops. Thus the law is not a value-free rule, where the benefits or harms depend solely on the person implementing or

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implementing it. The United Nations General Assembly Declaration dated November 20, 1989 stated that children have the right to obtain special protection, opportunities and facilities that enable them to develop in a healthy and natural manner in conditions of freedom and in accordance with human dignity, have citizenship from birth, receive social security including nutrition. Adequate health services, receive education, obtain legal protection, both against all forms of neglect, cruelty and oppression, as well as against acts that take the form of discrimination.

In a child who is a witness in a criminal act, a child can experience pressure and conditions that are not in accordance with his mental and mental readiness. The possibility of retaliation from the perpetrators and the very risky position of the witness, does not rule out the possibility of a change no longer as a witness but also as a perpetrator. The state's juridical commitment to protect its citizens is mentioned in the fourth paragraph of the 1945 Constitution, which is further elaborated in Chapter XA on Human Rights (HAM). Specifically for legal protection of children, Article 28 B paragraph (2) of the 1945 Constitution states: "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination". The rights stated in Article 28 are certainly not monopolized by adults, but also children, some of these rights are: 1). the right to live and defend life and life (Article 28 A of the 1945 Constitution). 2). the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law (Article 28 D paragraph (1) of the 1945 Constitution). 3). The right to personal protection, honor, dignity, and property under his control as well as the right to a sense of security from the threat of fear to do or not do something which is a human right (Article 28G paragraph (1) of the 1945 Constitution). 4). the right to be free from torture or treatment that degrades human dignity (Article 28 G paragraph (2) of the 1945 Constitution).

The SPPA Law regulates the protection of the safety guarantee for children who are witnesses in Article 90 Paragraph (1) point (b) which states "safety guarantees, both physical, mental, and social". Security guarantees are needed as a child who is a witness in a criminal justice trial. As one of those whose statements become evidence, there is a tendency that the testimony given by a child will harm the perpetrator as well as benefit the victim. Therefore, the existence of witnesses may be threatened by other parties who feel aggrieved by the testimony. As a tangible form of protection for the safety or security of child witnesses, the SPPA Law provides flexibility for witnesses to give their required testimony in the trial process. Article 58 paragraph (1) states that when examining the Child of the Victim and/or the Witness, the Judge may order that the Child be brought out of the courtroom; (2) At the time of examination of the Child Victim and/or Child Witness as referred to in paragraph (1), the parents/guardian, advocate or other legal aid provider, and the Community Counselor are still present. In the event that the Child Victim and/or Child Witness is unable to attend to give testimony before a court session, the Judge may order the Child Victim and/or Child Witness to have their statements heard: Investigators or Public Prosecutors and Advocates or other legal aid providers; or; b) Through direct remote examination using audiovisual communication tools accompanied by parents/guardians, community counselors or other companions.

The trial process in the juvenile criminal justice system does not require that the child of the victim and or child of a witness is always present in the courtroom. If the judge sees that there is a separation of interests in protecting children, it is intended to protect and protect children who are in conflict with the law so that children can meet their long future and provide opportunities for children so that through coaching they will acquire their identity to become independent, responsible, and useful human beings for themselves, their families, society, nation and state. Child protection also includes activities that are direct and indirect from actions that harm children physically and/or psychologically. The best interest of the child is that all actions and decisions concerning children, whether carried out by families, communities or law makers, the survival and development of children must always be the main consideration. Respect for children's opinions is to give freedom to children in order to develop their creativity and intellect (the power of reason). Respect for children's rights to participate and express opinions according to the child's age level in making decisions, especially when it comes to matters that affect children's lives. The survival and development of children are the most basic rights for children which are protected by the state, government, community, family, and parents. Every child has the right to be protected from harmful actions, causing mental, physical and social suffering.

## CONCLUSION

The conclusions from the results of the research and discussion are:

1. Proving the testimony of minors is an important factor in the examination process until the court process because it is with proof that the defendant's verdict is determined and only the proof of a criminal act can be imposed with a criminal sentence. Which is in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims that providing information to investigators must be free from all kinds of threats, pressures, both in any form and from anyone. It is also regulated in Article 171 letter a of the Criminal Procedure Code if a child is not yet 15 years old, his testimony is taken without taking an oath. This causes the child to no longer be considered as valid evidence and does not have the power of proof because it does not have

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formal requirements. And in order for children to be used as child witnesses, they must meet certain requirements. The extent to which the validity of the testimony of child witnesses has evidentiary value for the judge, returning to the judge's subjective assessment because the assessment of witness evidence is generally not binding, as well as the statements of child witnesses. It can be said that the evidence of witness testimony as valid evidence is free and imperfect and not decisive or binding. The judge is free to judge its perfection and correctness. Even though a child's statement (a statement without an oath) is not a valid evidence, nor does it have the power of proof, it can be used to strengthen the judge's conviction as referred to in Article 169 paragraph (2) and can be used as a guide as contained in Article 169 paragraph (2). Explanation of Article 171 of the Criminal Procedure Code.

2. The testimony of witnesses at the trial given by the child in a proof of a criminal case in which the judge is guided by the judge's belief that emerges from the instructions and cannot be separated from the applicable regulations. And also these regulations, both those regulated in the Criminal Procedure Code and other laws that specifically regulate. Because the narrative or information given by a child witness can have evidence value which in itself raises the strength of evidence that can be used as a guide or strengthen the judge's belief in making a decision.

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