



## Judge's Decision on Child Crimes

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**Abstract:** This study aims to determine judges' decisions on criminal acts of juvenile delinquency. The method used in this study is normative research methodology and uses a statutory and shirt approach as well as descriptive analysis techniques. The results of this study indicate that the judge's considerations in deciding cases of crimes of violence committed by children can be seen from the two decisions by looking at the facts of the trial where the evidence submitted by the public prosecutor and the evidence was acknowledged by the defendant and also looking at the testimony of witnesses which also adds to the arguments against the defendant so that in the court process the judge is stronger in the judge's conviction to decide on the case on a fair basis seeing in the defendant, the judge does not find justification or pardon that can relieve the defendant from his case so that he must be held accountable.

**Keywords:** Consideration; Judge's Decision; Criminal; Child;

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## 1. Introduction

Crime is an act that can harm other people, one of the facts in life which requires special handling. Therefore, various efforts are always made to overcome this crime, even though in reality it is very difficult to eradicate crime because basically crime will always develop along with the development of society. <sup>1</sup>The concept of protecting human rights cannot be separated from the applicable criminal law. This is closely related to perpetrators and victims of human rights violations and crimes. Regarding the perpetrators and victims of human rights violations and crimes, criminal law has strictly regulated it. Almost all the substance of the article in the Criminal Code regulates the protection of human rights, the term used by using the words whoever is threatened. Shows that basically, it is a form of protection that there are acts of violation and crimes against human rights.<sup>2</sup> Human rights and the rule of law cannot be separated. One of the goals of recognizing and strengthening a rule of law is to protect human rights, meaning that individual rights and freedoms are recognized, respected, and upheld.<sup>3</sup>

Middle and high school students in developmental psychology are called teenagers and they think that they are no longer children, but are not yet able to hold the responsibilities of adults. School students are included in the adolescent age group, which is an age group that is still unstable in dealing with problems that they must overcome. Under these conditions, students think that the actions they have taken are only a symbolic manifestation of channeling their aspirations as a consequence of the treatment they feel is unfair to them.<sup>4</sup>

The position of the family is very important in educating children, if the family fails in educating children, they tend to commit acts of delinquency in society, which can lead to criminal acts. The role of the family is very important in shaping a child's personality because the family is the place for the initial development of a child from birth to the process of his physical and spiritual

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<sup>1</sup> Wirjono Projodikoro, *Tindak -Tindak Pidana Tertentu Di Indonesia*. (Jakarta: PT.Refika Aditama, 2002)., 15

<sup>2</sup> Lisnawaty Badu, "Pengaturan Dan Perlindungan Ham Dalam Uud 1945" *Jurnal Legalitas*. 3, No. 2 (1945): 26-39., 33

<sup>3</sup> Badu Lisnawaty, "Euthanasia and Human Rights" *Journal of Legality*. 5, No. 1 (2012): 1-11., 1.

<sup>4</sup> Prima Suhardi Putra, "Penegakan Hukum Terhadap Tindak Pidana Dengan Kekerasan Yang Dilakukan Oleh Anak Pelajar Sekolah Dibawah Umur Di Wilayah Hukum Polres Metro Jakarta Selatan" (Universitas Sebelas Maret Surakarta, 2008)., 13

development. For a child, the family has a meaning and function that is vital for survival and in finding the meaning and purpose of his life.<sup>5</sup>

Along with the rapid development of development, the flow of globalization in the field of information and communication, advances in science and technology, and changes in the style and way of life of most parents are able to bring about fundamental social changes in people's lives and this greatly influences the values and behavior of children. The development of digitalization of information and communication technology in the form of social media exposes the public to a new reality, namely the mortal world that is visible from the device/gadget screen but synchronized with real-world life.<sup>6</sup> Precisely the development of increasingly advanced technology is required to develop itself.<sup>7</sup> In fact, this can encourage children to commit crimes. Because the characteristics of children are different from adults, children who commit crimes should still receive legal protection from the state. One of the principles used in child protection is that children are the main capital for the survival of humans, the nation, and the family, and for that their rights must be protected. Children cannot protect their own rights, many parties affect their lives. The state and society have an interest in working to protect children's rights.<sup>8</sup>

Efforts to protect children must be started as early as possible so that in the future they can optimally participate in the development of the nation and state. In Article 2 paragraphs (3) and (4) of the Law of the Republic of Indonesia No. 4 of 1979 concerning Child Welfare, it is determined that: "Children have the right to care and protection during the womb and after birth. Children have the right to environmental protections that can harm or hinder normal growth and development. These two paragraphs provide the rationale that child protection intends to strive for the right and fair treatment, in order to achieve child welfare. The protection of children in a national society is a benchmark for the nation's civilization, therefore it must be endeavored according to the capabilities of the nation and the nation. Child protection activity is a legal action that has legal

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<sup>5</sup> Maidin Gultom, *Legal Protection Against Children*. (Bandung: PT Refika Aditama, 2014), 69

<sup>6</sup> Moh. Rusdiyanto U. Puluhulawa dan Riski Husain, "Body Shaming through Social Media as a Digital Crime in the Era of Disruption" *Jambura Law Review*. 3, No. 01 (2021): 112-123., 117

<sup>7</sup> Dolot Alhasni, "Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right " Determination of The Legal Protection of Right-Holders To" *Jambura Law Review*. 2, No. 01 (2020): 65-82., 67

<sup>8</sup> Maidin Gultom, *Op. Cit.*, 39.

consequences. Therefore, there is a need for legal guarantees for child protection activities. Legal certainty needs to be sought for the sake of continuing child protection activities and preventing abuses that bring unwanted negative consequences in the implementation of child protection activities. For this reason, child protection activities have at least two aspects. The first aspect relates to policies and laws and regulations governing children's rights. The second aspect concerns the implementation of these policies and regulations. Legal certainty needs to be sought for the sake of continuing child protection activities and preventing abuses that bring unwanted negative consequences in the implementation of child protection activities. For this reason, child protection activities have at least two aspects. The first aspect relates to policies and laws and regulations governing children's rights. The second aspect concerns the implementation of these policies and regulations. Legal certainty needs to be sought for the sake of continuing child protection activities and preventing abuses that bring unwanted negative consequences in the implementation of child protection activities. For this reason, child protection activities have at least two aspects. The first aspect relates to policies and laws and regulations governing children's rights. The second aspect concerns the implementation of these policies and regulations.<sup>9</sup>

One of the efforts as the author meant above is the diversion effort. It is this diversion effort that is the striking difference between Law Number 3 of 1997 and Law Number 11 of 2012. Based on Article 1 point 7 of Law Number 11 of 2012 "Diversion is the transfer of settlement of child cases from the criminal justice process to the criminal justice process. outside of criminal justice". The most basic substance in Law Number 11 of 2012 is strict regulation regarding Restorative Justice and Diversion which is intended to avoid and keep children away from the judicial process so as to avoid stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment naturally. . The process must aim at creating restorative justice for both children and victims. In the Diversion process, all parties involved in a crime jointly overcome problems and create an obligation to make things better by involving victims, children, and the community in finding solutions that are oriented towards improvement, reconciliation, and reassurance that are not based on retribution. The existence of existing regulations provides equal rights for every citizen. reconciliation and reassurance that is not based on revenge. The existence of existing regulations provides equal rights for every citizen. reconciliation and

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<sup>9</sup> Nashriana, *Perlindungan Hukum Pidana Bagi Anak Di Indonesia*. (Jakarta: PT Raja Grafindo Persada, 2011)., 3

reassurance that is not based on revenge. The existence of existing regulations provides equal rights for every citizen.<sup>10</sup> So with that in order to fulfill the necessities of life there are often crimes and violations committed by certain people and people who threaten some members of the community, these threatening actions are criminal acts.<sup>11</sup> Therefore of these cases the perpetrators should be sentenced to the maximum in accordance with statutory provisions.<sup>12</sup>

If you look at the description above, according to the author, the court is a forum for solving problems for those who have cases, both criminal and civil. While the judge is a state court official who is authorized by law to adjudicate.<sup>13</sup> So that if it is related to the object of research rather than the author, courts and judges have one thing in common that cannot be separated in terms of giving various kinds of decisions to those who are in litigation. Not only that, the function of both is how the parties benefit from what the judge will decide.

## 2. Method

The research used in this paper is normative legal research that focuses on the study of legal norms or juridical reviews and takes a statutory and case approach and uses descriptive data analysis techniques.

## 3. KnowJudge's Decision on Child Crime Crimes

Children who violate the law are strongly influenced by several other factors outside the child. To provide protection for children from the influence of the formal process of the criminal justice system, human thoughts or legal experts arise to make formal rules for the act of expelling a child who is suspected of having violated the law or having committed a crime from the general criminal justice process by providing other alternatives considered better for kids.<sup>14</sup> However, in general, a person who is strongly suspected of having committed a

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<sup>10</sup> Abdul Hamid Tome, "Dynamics of Village Head Election Arrangements" *Jambura Law Review*. 3, No. Special Issue (2021): 96-116., 101.

<sup>11</sup> Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes" *Jambura Law Review*. 3, No. 1 (2021): 57-76., 58.

<sup>12</sup> Mohamad Rizky Alhasni, Lisnawaty W Badu, and Novendri M Nggilu, "Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak Di Bawah Umur" *Jurnal Legalitas*. 12, No. 2 (2019): 110-123., 112.

<sup>13</sup> Article 1 Paragraph 8 of the Criminal Procedure Code

<sup>14</sup> Louisa Yesami Krisnalita, "Diversi Pada Tindak Pidana Yang Dilakukan Oleh Anak" 8, No. 1 (2019): 93-106., 100

crime must also be treated like a human being.<sup>15</sup> Legal protection is needed because efforts to integrate various needs in association so that there is no collision between needs and can enjoy all the rights granted by law.<sup>16</sup> The benefit is that it does not become a clash in the life of society and the state.<sup>17</sup> The existence of complete assistance and protection as a form of fulfillment of constitutional rights for every citizen in accordance with the purpose of legal assistance.<sup>18</sup> Because the essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system.<sup>19</sup>

According to the justice system against children, namely the laws and regulations relating to criminal sanctions and punishment which are oriented towards the aspect of formulating policies that are studied from the aspect of the type of formulation of criminal sanctions (transport), the formulation of the duration of criminal sanctions (strafmaat), and the implementation of crimes (strafmodus), it turns out that the formulation system of criminal sanctions (strafsoort) is single.<sup>20</sup> The government creates order and peace in people's lives and maximizes the potential for regional development.<sup>21</sup> Therefore, the important point is to ensure that every competent person has the authority to carry out a prompt and impartial investigation into indications of being persecuted, such as acts of torture or serious discrimination that occurred in their jurisdiction.<sup>22</sup>

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<sup>15</sup> Dian Ekawaty Ismail and Yowan Guest, "Efforts to Protect the Rights of the Suspect/Defendant Through Pretrial Mechanisms in the City of Gorontalo," *Journal of Mimbar Hukum*. 21, No. 1 (2009): 81-92., 83.

<sup>16</sup> Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Leato Underwater Site Legal Protection / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site / Japanese Cargo Wreck Abstract" *Legal Reformation Journal*. 24, No. 2 (2020): 189-208, 197.

<sup>17</sup> Lusiana Tijow, "Protection of Human Rights Against the Right to Life of Children in the Womb Outside of Legal Marriage" *Journal of Legality*. 3, No. 2 (2003): 79-90., 80.

<sup>18</sup> Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations" *Jambura Law Review*. 3, No. 02 (2021): 365-377., 370.

<sup>19</sup> Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution" *Jurnal Konstitusi*. 16, No. 4 (2019): 785-808., 791.

<sup>20</sup> Hadi Supeno, *Decriminalization of Children* (Jakarta: Indonesian Child Protection Commission, 2010), 7

<sup>21</sup> Sri Nanang Meiska Kamba Nuvazria Achir, "The Function Of Sharia-Based Regional Regulations On Education And Social Services In The Regions" *Jambura Law Review*. 3, No. Special Issue (2021): 1-17., 16.

<sup>22</sup> Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China's Policy towards Uighurs and Its Implications by International Law Aspects" *Jambura Law Review*. 3, No. 01 (2021): 55-71., 66.

The legal certainty set forth in the judge's decision is a result based on juridically relevant trial facts and considerations with a conscience. Ideally, judges are always required to always be able to interpret the meaning of laws and other regulations that are used as the basis for implementation. Don't let this happen, in the implementation or enforcement of this law there will be unrest in society.<sup>23</sup> An alarming phenomenon in the field of law enforcement and justice in court is legal justice which is no longer in line with social justice.<sup>24</sup> Quoting as said by Suwitno Yutye Imran that justice serves as a guideline to distinguish between just and unfair actions, elements of the aspect of justice can be contained in the substance.<sup>25</sup> The application and enforcement of the law are elements of the legal system that must be continuously addressed in order to create a legal position in a legal state that is beneficial to the interests of society, nation, and state.<sup>26</sup>

### **1. Decision Number 4/Pid.Sus-Children/2020/PN Lbo**

In the decision with Number 4/Pid.Sus-Children/2020/PN. Lbo there are several legal facts that were revealed based on witness statements, namely as follows:

- a. That it was true that on Wednesday 25 March 2020 around 17.00 WITA at the football field in Luwoo Village, Telaga District, Gorontalo Regency, initially when Moh. Reza Pakaya's son, the victim's child Haikal Rahim and several friends intended to enter the football field to playing soccer to play soccer, because at that time the number of players was more than 5 (five) people, the children asked the victim Haikal Rahim's child to leave the field but at that time the victim Haikal Rahim's child was not willing to come out so an argument ensued between the child and victim's child.
- b. That was true because of the debate, then the victim's child Haikal Rahim left the field and walked with his back to the child, so that the child who was no longer able to control his emotions immediately chased the victim's child and beat him with clenched fists which hit the back of the victim's child's head so that the victim's child fell down and an incident occurred. there was a fight, after which the witness Zulkifli Hasan immediately grabbed the victim's child and took him to the sidelines.

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<sup>23</sup> Sutrisno, Puluhalawa Fenty, and Lusiana Margaereth Tijow, "Application of the Principles of Justice, Legal Certainty and Benefit in Judges' Decisions on Corruption Crimes" *Gorontalo Law Review*. 3, No. 2 (2020): 168–187., 173.

<sup>24</sup> Fence M. Wantu, "Judge Obstacles in Creating Legal Certainty, Justice, and Benefit in Civil Courts" *Journal of Mimbar Hukum*. 25, no. 2 (2011): 205–218., 208.

<sup>25</sup> Suwitno Yutye Imran, "The Urgency of Regulation of the Ultra Judicial Principle in Criminal Judgments" *Jambura Law Review*. 3, No. 2 (2021): 395–410., 398.

<sup>26</sup> Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI-Press, 2010), 11.

- c. That it is true that as a result of the actions of the child perpetrator, the victim's child suffered an injury to the back of the head as stated in the Visum Et Repertum of the Tilango Health Center Number: 800/PKM-TLNGO/1115/III/2020 dated 26 March 2020, the victim An. Haikal Rahim, 14 (fourteen) years old, student job, address in Luwoo Village, Telaga Jaya District, Gorontalo District, by the doctor who examined dr. Mohammad Syamsul Antuli explained the results of the examination: "on the back of the head five centimeters from behind the ear there is a bruise, swelling, the color of the surrounding area, the boundaries are not clear with a size of two centimeters by two point five centimeters"
- d. That it is true that the child regrets what he has done and promises not to repeat it again.<sup>27</sup>

After looking at the legal facts above, the panel of judges did not find a reason for the abolition of crimes against children, so the panel of judges decided on a prison sentence of 1 month and 15 days and charged the child with paying court fees in the amount of Rp. 2,000.00 (two thousand rupiahs).

The judge in deciding a case does not only look at that particular case but also the judge looks at the impact that will occur on society, whether this decision can fulfill the principle of benefit or not. Legal certainty is not a barometer in deciding a case. The judge's decision will reflect expediency, when the judge does not only apply the law textually and only pursues justice, but also leads to benefits for the interests of the litigants and the interests of society in general. Referring to previous research conducted by Seorya S, it was said that the judge as a law enforcement officer has a duty as one of the determinants of a case decision from the disputing parties. In order to be able to resolve a problem or dispute for which a decision is requested, in the process of making a decision the judge must be independent and free from the influence of any party. Judges in making decisions are only bound by relevant events or facts and legal rules that become or are used as a juridical basis.<sup>28</sup>

In imposing a crime against a child, it is necessary to consider in advance the aggravating and mitigating circumstances of the child, including the first aggravating circumstances including the child's actions disturbing the community and the child's actions causing the victim to suffer

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<sup>27</sup> "Decision Number 4/Pid.Sus-Children/2020/PN Lbo."

<sup>28</sup> M Guntur HM. Soerya Respationo dan Hamzah, "Putusan Hakim: Menuju Rasionalitas Hukum Refleksif Dalam Penegakan Hukum" *Jurnal Yustisia*. 2, No. 2 (2013): 101-107., 43



bruises. Meanwhile, mitigating circumstances include that he regrets his actions and promises not to repeat them and this child has never been punished. According to MH Tirtaamidjaja, the judge's way of determining punishment for the defendant, namely "as a judge he must try to determine a sentence, which is felt by the community and by the defendant as an appropriate and fair punishment."<sup>29</sup>

Based on the results of an interview with Muammar Maulis Kadafi as the judge who decided the child case at the Limboto District Court said that:

"Based on the judge's considerations in the above case having been fulfilled because all the elements of Article 80 paragraph (1) have been fulfilled, the child must be declared legally and convincingly proven to have committed a crime as charged in a single indictment. Article 80 paragraph (1) material law carries a cumulative penalty in the form of imprisonment and fines, based on Article 71 paragraph (3) Law number 11 of 2012 concerning the Juvenile Criminal Justice System. The fine will be replaced with job training, the duration of which will be determined in the verdict."<sup>30</sup>

The facts of the trial in Decision Number 4/Pid.Sus-Anak/2020/PN Lbo case, the Judge did not find things that could release the Child from criminal responsibility, both as justification and excuse reasons, therefore the Judge was of the opinion that the child's actions must be accountable to him. During the examination at trial, the court did not find things that could eliminate criminal charges against the child, both forgiving and justifying reasons, therefore the child must be held accountable for his actions, but because currently, the child is still 15 years old, the judge will consider a sentence that is commensurate with his mistake, in accordance with the provisions of the Republic of Indonesia Law No.11 of 2012 concerning the Juvenile Criminal Justice system.<sup>31</sup>

Referring to Bambang S. That the judge in deciding a case must be wise in accordance with the applicable principles. Because as law enforcers, judges have the main duties in the judicial field, namely receiving, examining, decoding, and settling every case submitted to him. With such a task, it can be said that the judge is the core executor who functionally exercises judicial power. Therefore, its existence is very

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<sup>29</sup> MH Tirtaamidjaja, *Fundamentals of Criminal Law* (Jakarta: Fasco, 1955)., 53

<sup>30</sup> "Results of Interview with Muammar Maulis Kadafi as Judge of the Limboto District Court, 24 November 2022, 10:42 WITA"

<sup>31</sup> "Decision Number 4/Pid.Sus-Children/2020/PN Lbo"

important and determinant in upholding law and justice through its decisions.<sup>32</sup> The efforts and role of law enforcers play an important role in eradicating every crime.<sup>33</sup>

Taking into account the matters used as the basis for considering the imposition of a sentence as mentioned above, the verdicts handed down below are seen as fair and as a means of education for children and preventive for the community. Because a child is sentenced to a crime, he must also be burdened with paying court fees.

Based on the author's analysis of Decision Number 4/Pid.Sus-Anak/2020/PN Lbo that "Based on the facts of the trial, the evidence submitted by the Public Prosecutor, namely in the form of a Visum Et Repertum letter, revealed that it was acknowledged by the perpetrator that it was true that the perpetrator committed physical violence resulting in a bruise on the back of the head of five centimeters, swelling, the color of the surrounding area, the boundaries are not clear with a size of two by two point five centimeters. So those are the arguments against the offender. Evidence is not a tool, but evidence can be a source of evidence. Proof in criminal law is something that is very important and primary. In article 6 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power,

Evidence means tools that have something to do with a crime, where these tools can be used as evidence, in order to generate a judge's belief in the truth of a crime that has been committed by the defendant. According to Article 184 of the Criminal Procedure Code, valid evidence is Witness statements, expert statements, letters, instructions, and statements of the accused. The function of evidence in court proceedings, namely: to strengthen the position of legal evidence, to seek and find the material truth of the court case being handled, and after the evidence is valid, the evidence can strengthen the judge's conviction for all the mistakes the Public Prosecutor has charged. Evidence is everything that has to do with an act, where with the evidence,<sup>34</sup>

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<sup>32</sup> Bambang Sutyoso, *Legal Discovery Methods - Efforts to Realize Certain and Just Law* (Yogyakarta: UII Press, 2006)., 5

<sup>33</sup> Aniza Lakoro, Lisnawaty W Badu, and Nuvazria Achir, "Perjudian Togel Online ' Weak Polices In Handling Criminal Actions Online Togel Gaming '" *Jurnal Legalitas*. 13, No. 01 (2019): 31-50., 33.

<sup>34</sup> I. Rusyadil, "The Power of Evidence in Criminal Case Trials" *Prioris Law Journal*. 5, No. 2 (2016): 128-134., 130

Based on the elucidation of Article 3 paragraph (1) 48 of 2009 what is meant by the conviction of a judge is that the judge decides a case based on conviction to a certain extent. The judge's belief in the theory of proof is commonly referred to as conviction in time. It was explained that the judge's decision was based on conviction to a certain extent and was supported by clear juridical arguments. The function of the judge's conviction is to try and decide a case and carry out their duties as well as possible. Judges in carrying out their duties should be truly professional and always uphold the law and the values of justice. Because the laws governing children as perpetrators of criminal acts, namely Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, do not strictly regulate the threat of punishment for perpetrators of child crimes. According to Fence M. W Judges must have the professional ability as well as high morale and integrity in order to be able to reflect a sense of justice and provide benefits and legal certainty. In addition, judges must have the ability to communicate and carry out their roles and status that can be accepted by society. So that from this it can give a sense of trust in the community for the decision given because it is based on the judge's conviction. According to Fence M. W Judges must have the professional ability as well as high morale and integrity in order to be able to reflect a sense of justice and provide benefits and legal certainty. In addition, judges must have the ability to communicate and carry out their roles and status that can be accepted by society. So that from this it can give a sense of trust in the community for the decision given because it is based on the judge's conviction. According to Fence M. W Judges must have the professional ability as well as high morale and integrity in order to be able to reflect a sense of justice and provide benefits and legal certainty. In addition, judges must have the ability to communicate and carry out their roles and status that can be accepted by society. So that from this it can give a sense of trust in the community for the decision given because it is based on the judge's conviction.<sup>35</sup>

According to the author, the judge's conviction will basically originate from the conscience rather than the judge himself, which is based on the facts revealed in the trial. Where the facts will be analyzed in as much detail as possible to be able to provide a value of justice for the litigant. Therefore, what will become the judge's decision will not discredit the dignity of the judiciary by members of the public who consider that the

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<sup>35</sup> Fence Wantu, "Judges' Obstacles in Creating Legal Certainty, Justice, and Benefit in Civil Courts" *Journal of Mimbar Hukum*. 25 No. 2 (2011): 205-218., 212

judge's decision does not have a sense of justice for society and is only concerned with their own interests.

## **2. Decision Number 19/Pid.Sus-Children/2019/PN Lbo**

In the decision with Number 19/Pid.Sus-Anak/2020/PN Lbo there are several legal facts that were revealed based on witness statements, namely as follows:

- a. That it is true that the incident on September 7 2020 took place in Ombulo Hijau Village. At first, when Aditya Abiding, who was crossing the road in Ombulo Hijau Village, was on his way home and was riding a motorcycle and when he was crossing Batu Hijau Village, he was confronted by an actor named Asdi Mohammad alias Asdi.
- b. It was true that the victim Aditya Abiding got off the motorbike and was pushed and hit in the face by the perpetrator Asdi Mohammad and without putting up any resistance from the victim and residents who saw the incident come to intervene.
- c. That it was true that as a result of the perpetrator's actions, the victim suffered facial injuries and bruises on the back of the head and suffered pain in the chest and back as in the Visum Et Repertum by the doctor who examined dr. Sri Darsiyanti explained the results of the examination: "On the face there are bruises, swelling, the color of the surrounding area, the size of five centimeters x two points five centimeters"
- d. That is true, after reports from Aditya's parents, a meeting was facilitated between the parents of the two perpetrators, Asdi Mohamad, the village head, Bapas, local police investigator for diversion efforts.
- e. That it is true that the child regrets what he has done and promises not to repeat it again.<sup>36</sup>

Based on the results of research interviews with First Brigadier Ardian Kamaru as the Investigator for the Protection of Women and Children said that:

"In the case of a violent crime committed by a child that occurred in Ombulo Hijau Village, a meeting has been facilitated and efforts have been made to diversion. The case of physical violence

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<sup>36</sup> "Decision Number 19/Pid.Sus-Children/2020/PN Lbo."

perpetrated by this child was attended by the village head, the child's parents, the child victim's parents, the Bapas, and investigators and police officers. In that meeting, they forgave each other and the victim's child also graciously forgave the child's actions. Cases of violence involving children and child victims were successfully diverted and so peace ensued. And indeed, if the perpetrators are children and the victims are children, most of the cases will be diversion because remembering that children are the next generation of the nation that must be looked after by all groups, especially since they still have a future for the next generation, so this diversion effort is very important."<sup>37</sup>

Based on the author's analysis of Decision Number 19/Pid.Sus-Anak/2020/PN Lbo based on trial facts, the evidence submitted by the Public Prosecutor, namely in the form of a Visum Et Repertum letter, revealed that the perpetrator admitted that it was true that the perpetrator committed physical violence causing bruises on the face, swelling, the color of the surrounding area, the size of five centimeters by two point five centimeters. Evidence is not a tool, but evidence can be a source of evidence.

Proof in criminal law is something that is very important and primary. In Article 6 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, it is stated that no one can be sentenced to a crime unless the court, due to valid means of proof according to law, is convinced that a person who is considered responsible has been guilty of the acts he is accused of. Evidence means tools that have something to do with a crime, where these tools can be used as evidence, in order to generate a judge's belief in the truth of a crime that has been committed by the defendant. Referring to the opinion of Yahya H. Whereas Evidence is provisions that contain outlines and guidelines regarding ways that are justified by law to prove the guilt of the accused. Evidence is also a provision that regulates evidence that is justified by law and may be used by judges to prove the guilt of the accused.<sup>38</sup>

Returning to the judge's belief, in general, will give the parties a stigma for the decision they will take. Based on the elucidation of Article 3 paragraph (1) 48 of 2009 what is meant by the conviction of a judge is that the judge decides a case based on conviction to a certain extent. The judge's

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<sup>37</sup> "Interview with Brigadier Ardian Kamaru as Investigator for Women and Children Protection. November 22, 2022, 13:29 WITA"

<sup>38</sup> M. Yahya Harahap., Discussion of Problems and Application of the Criminal Procedure Code: Court Examination, Appeal, Cassation, and Judicial Review. (Jakarta: Sinar Graphic, 2006)., 273

conviction does not need to be supported by valid evidence because it is not required. Even though the evidence has been stipulated by law, judges can use evidence outside the provisions of the law. What needs to be explained is that the judge's conviction must be explained with logical reasons.<sup>39</sup>

According to the author, the function of a judge's conviction is to try and decide a case and carry out his duties as well as possible. Regarding diversion efforts, the handling of child cases still does not meet the expectations of the community as expected by law because there are still many child cases that occur in the community, children are still subject to criminal sanctions because most of the child's actions are violent crimes. And it should be necessary to review the age of the child according to the Law on the Juvenile Criminal Justice System because in this Law a child who can be punished is a child aged 12 years and over but, because the child is still a child, the child may not be punished but given guidance. So based on an analysis of the disparity in judge's decisions the occurrence of disparities in criminal cases with children as the perpetrators will have a negative impact. So it can be ascertained from the two research objects that have been described by the authors above that the two decisions have been based on the law and on the conviction of the judge and what must be considered is that when they are still said to be children, their future development is still long.

So according to the author that what must be prioritized in cases of crimes committed by children is Restorative Justice and Diversion, this is also in accordance with the Chief of Police Circular Number 8 of 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases. So it can be ascertained from the two research objects that have been described by the authors above that the two decisions have been based on the law and on the conviction of the judge and what must be considered is that when they are still said to be children, their future development is still long. So according to the author that what must be prioritized in cases of crimes committed by children is Restorative Justice and Diversion, this is also in accordance with the Chief of Police Circular Number 8 of 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases. So it can be ascertained from the two research objects that have been described by the authors above that the two decisions have been based on the law and on the conviction of the judge and what must be considered is that when they are still said to be children, their future development is still long. So according to the author that what must be prioritized in cases of crimes committed by children is Restorative Justice and

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<sup>39</sup> Andi Hamzah, Introduction to Indonesian Criminal Procedure Law (Jakarta: Ghana Indonesia, 1985), 241

Diversion, this is also in accordance with the Chief of Police Circular Number 8 of 2018 concerning the Application of Restorative Justice in Settlement of Criminal Cases.

#### **4. Conclusion**

The judge's considerations in deciding cases of crimes of violence committed by children can be seen from the two decisions by looking at the facts of the trial where the evidence submitted by the public prosecutor and the evidence was acknowledged by the defendant and also looking at the testimony of witnesses which also adds to the arguments against the defendant so that in the court process the judge is stronger in the judge's conviction to decide on the case with the right to see in the defendant, the judge does not find justification or pardon that can relieve the defendant from his case so he must be held accountable

Dropping a judge's decision should consider the aspects of the loss experienced by the victim so that in punishing the perpetrator it can provide a deterrent effect not to commit an act that harms many people, not only to the perpetrator but can be a lesson for others, this is because in several decisions issued by judges tend to set aside matters aggravating the defendant so that often the decisions issued are far from what they should be.

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