



Disparity in Judges' Decisions Against Children Participating in Brawls (Case Study of Decision No.1/ Pid.Sus -Anak/2023/ Pn SKB and Decision No.14/ Pid.Sus -Anak/2022/ Pn CBD)

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ABSTRACT

In social life, children are often involved in crimes, one of which is fights or brawls. Therefore, serious countermeasures are needed through proper law enforcement. Currently, the application of material criminal law against fights or violence is still not aligned until disparities arise. This study uses a juridical-normative method with the aim of determining the application of material legal crimes in Decision No. 14 / Pid.Sus-Anak/2022 / Pn Cbd and Decision No.1 / Pid.Sus-Anak/2023 / Pn Skb. The results of the study show that Decision No. 14 / Pid.Sus-Anak is not appropriate, because it applies the legal basis, namely Article 358 paragraph 2 of the Criminal Code. Meanwhile, Decision No.1/pid. Sus-Anak/2023/PN SKB has been in accordance with the applicable provisions, namely applying Article 76C juncto Article 80 of Law Number 35 of 2024 concerning Child Protection by applying the principle of *lex specialist derogat legi generalis*.

INTRODUCTION

Basically, all citizens want order and comfort in carrying out community life. As a citizen, everyone, both adults and minors, is obliged to obey the applicable legal norms. However, it is undeniable that in social life, children cannot be separated from mistakes. Children tend to often make mistakes that violate norms and interfere with people's lives, one of which is being involved in crime. Nowadays, crime or criminal acts have become a separate social conflict for the entire order of people's lives, because they can cause unrest in society. One of the actions that children often do is to get involved in brawls. Brawls are an act of violence that can cause physical damage, both causing injuries and even death. Student fights or commonly called brawls are mass fights, which are violent behaviors between groups of male students aimed at groups of students from other schools (Hamdani, 2024). The acts of brawls carried out by children are increasingly diverse, and what is currently being done is the act of brawls using sharp weapons. Therefore, serious countermeasures are needed through proper law enforcement against these criminal acts. However, the term brawl crime is not explicitly regulated either in the criminal code or in other special laws, it's just that brawl is an act of violence that can meet the elements in several article formulations.

In criminal law, every person involved in a criminal act, even if it only plays a role as a participant, needs to be held accountable for his actions. This has been regulated in Articles 55 and 56 of the Criminal Code which explain the participation offense. Currently, the settlement of cases of children participating in brawls is still not aligned. This is because the crime of brawls is not clearly regulated either in the Criminal Code or in a special law. This uncertainty causes several court decisions to contain differences (disparities), even though the cases handled are similar cases. According to Muladi and Barda Nawawi Arief, criminal disparity can occur in the punishment of those who commit a crime together (Gulo, 2018). The difference in the application of material criminal law used creates legal uncertainty. This can cause injustice to anyone. This is because there is no clarity regarding which material law should be applied to children who brawl, considering that the act is not clearly regulated. As a result, there are several court decisions that adjudicate cases of children who commit brawls using different material criminal laws. For example, in the District Court Decision No.1/Pid.Sus-Anak/2023/PN Skb and Court Decision No.14/Pid.Sus-Anak/PN Cbd. Moreover, currently brawls are very rampant, so there needs to be certainty regarding the appropriate material law to be used in resolving cases of children participating in brawls that result in death, because it can determine how severe or light a criminal is to be punished for his actions.

The court decision number 1/Pid.Sus-Anak/2023/Pn Skb and the decision of the Sukabumi Regency Court number 14/Pid.Sus-Anak/2022/Pn Skb which adjudicated a similar case, namely participating in a brawl that resulted in death, caused a very significant disparity phenomenon. Based on what has been described above, the phenomenon of disparity draws a gap in the settlement of criminal cases, in criminal cases where the object is children.

Through this research, the author formulates the problem with the aim of examining how the application of material law in the case of children participating in criminal acts of brawls that result in the death of children based on Court Decisions No.1/Pid.Sus-Anak/2023/Pn Skb and No.14/Pid.Sus-Anak/2022/Pn Skb?

THEORETICAL REVIEW

Legal Certainty Theory

This legal certainty has several meanings, including clarity, does not cause many interpretations or multiple interpretations, does not cause contradictions or contradictions, and can be implemented. Sudikno Mertokusumo stated that legal certainty is the implementation of the law according to its meaning so that the community can guarantee the implementation of the law (Margono, 2019). To be able to create legal certainty, Nur Hasan Ismail (in Nur & Mansyur, 2016) argues that there needs to be conditions related to the internal structure of its internal norms, which include:

- a) Clarity of the concept used, i.e. legal norms incorporate the description of certain behaviors into a specific concept.
- b) Clarity on the authority of the institution that establishes laws and regulations.
- c) There is consistency of legal norms, which means that the provisions of various laws related to an issue must not contradict each other.

This theory of legal certainty is the basis that in every enforcement of the rule of law, there should not be a phenomenon of criminal disparity, including in the settlement of brawl cases that are not explicitly regulated in the law. Therefore, with the principle of legal certainty, the law must be strictly enforced against every real event that occurs and there needs to be consistency so that there are no deviations in any form

METHODOLOGY

This research uses a juridical-normative method with reference to laws and regulations. The data source used in this study is a primary data source in the form of an interview with the Public Prosecutor from the Sukabumi District Attorney's Office and the Public Prosecutor from the Sukabumi City District Attorney's Office. Secondary data sources, namely consisting of scientific papers in the form of books and other relevant literature, as well as court decisions. Meanwhile, the technical analysis in this study uses an analytical descriptive method, namely by collecting data that describes or presents the results of the research and then compiling and presenting it in the form of a descriptive narrative.

RESEARCH RESULTS

Disparity is a problem that illustrates inconsistencies in several judges' decisions. Muladi and Barda Nawawi Arif stated that criminal disparity is the

application of unequal punishment to the same criminal act or to a criminal act whose dangerous nature can be compared without a clear justification. Furthermore, without referring to "legal categories", there can be criminal disparities in the punishment of those who commit offenses together (Gulo, 2018). However, the disparity has very serious consequences, this reflects that the law that is enforced has not achieved justice. In addition, Law Number 48 of 2009 concerning Judicial Power states that in the process of issuing a verdict, judges must pay attention to matters that meet the sense of justice, and to determine the sentence to be imposed, judges must pay attention to matters that meet the sense of justice. researching and reviewing the articles used. and also consider the good and bad of the defendant.

The disparity can occur due to differences in juridical considerations in the two decisions, one of which is the difference in articles in the indictment submitted by the public prosecutor. In addition, criminal disparity also occurs because of factors that the judge considers non-juridical such as circumstances or things that are mitigating and burdensome for the defendant, and the judge also considers the results of community research in imposing criminal sanctions (Alexsander & Widowaty, 2020).

The application of material criminal law against children participating in brawls resulting in death in Decision No.1/Pid.Sus-Anak/2023/PN SKB and Decision No.14/Pid.Sus-Anak/2022/PN CBD

Material law is a legal basis that will determine whether or not an act is prohibited by a person and whether or not a person can be punished if he commits a criminal act. In the criminal justice process, material law will always be used as a guideline and basis in determining punishment for perpetrators who commit criminal acts. In Indonesian positive law, several experts put forward the meaning of participation, including Mahrus Ali stated that participation is an individual who commits a criminal act together, and he participates in the implementation of the criminal act based on an agreement, so that two or more people who are said to be participants (medepleger) must all be actively involved in cooperation in realizing the criminal act they committed (Wahyuni, 2017). The Criminal Code regulates several forms of acts that can be qualified as participation in a criminal offense, some of which are regulated in Articles 55-56 of the Criminal Code. The articles stipulate that a person can be declared as participating in a criminal offense if he/she plays a role in committing, ordering to commit, participating in, encouraging, or assisting in committing. In Indonesian regulations, brawls are actions that are not strictly regulated. In fact, the Criminal Code does not even regulate the term brawl. However, the definition of brawl is a mass fight which is regulated in Article 358 of the Criminal Code. Article 358 is an article that regulates fights or attacks.

The substance of Article 358 of the Criminal Code, which regulates crimes against the body of a person or crimes against life, relates to the act of assault or fighting committed by several people. In this case, in addition to the perpetrator having to take responsibility for his own actions, he must also take responsibility for the consequences of the actions of others without considering

the consequences of serious injury or death that occur not as a result of the perpetrator's actions, but rather the actions of other perpetrators. In addition, the Criminal Code also regulates the act of committing violence together, namely in Article 170 of the Criminal Code. Article 170 is placed in Book II of the Criminal Code and is included in the category of crimes against public order. According to JM Van Bemmelen, the phrase "openly and with joint force using violence against persons or property" is interpreted as a crime against public order. Thus, the substance of Article 170 of the Criminal Code regulates crimes against public interest, especially aimed at demonstrations that use collective violence against persons or property. (Maudoma, 2015). Therefore, although the formulation of Article 170 of the Criminal Code regulates violence against persons or objects committed collectively, the article does not focus on individual interests caused physically, but rather relates to the interests of society and public order.

Meanwhile, regarding criminal acts of violence that result in mental victims who are minors and are categorized as children, Law Number 35/2014 2022 concerning Child Protection has specifically regulated violence against children, in article 70 C which states that: "Every person is prohibited from committing, allowing, carrying out, ordering to commit, or participating in violence against children". Article 80 of Law Number 35 Year 2014 reads:

- 1) Any person who violates the provisions as referred to in Article 76C, shall be punished with imprisonment of 3 (three) years 6 (six) months and/or a maximum fine of Rp. 72,000,000.00 (seventy-two million rupiah).
- 2) In the event that the child as referred to in paragraph (1) is seriously injured, the perpetrator shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp100,000,000.00 (one hundred million rupiah)
- 3) In the event that the child as referred to in paragraph (2) dies, the perpetrator shall be punished with a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of Rp3,000,000,000.00 (three billion rupiah). The sanction is increased by one-third of the provisions as referred to in paragraph (1), paragraph (2), and paragraph (3) if the perpetrator is a parent.

From the formulation of the article, for criminal acts of violence whose objects are minors, the perpetrators can be subject to sanctions in accordance with what is regulated in Article 80 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. (Kumontoy et al., 2022). However, it cannot be interpreted that brawls are something that is regulated in the formulation of these articles. So it is necessary to know the concrete application of material law in several court decisions related to the settlement of cases of child brawls that resulted in death.

Court Decision Number 14/ Pid.Sus-Anak/2022/ Pn CBD

In the case of participating in a criminal brawl involving several children including ABH I, ABH II, ABH III, and ABH IV where the incident resulted in violence against victims who were minors until they were seriously injured and died. The prosecutor filed an alternative charge with the first charge, namely Article 76C in conjunction with Article 80 of Law Number 35 of 2014 Amendment to Law Number 23 of 2002 concerning Child Protection. Then the second charge, namely Article 358 paragraph (2) of the Criminal Code. From the results of interviews with Aji Sukartaji, S.H., as the public prosecutor, the ABH violated Article 358 paragraph (2) of the Criminal Code because the ABH participated in a fight/attack against the victim which resulted in the death of the victim, and all of the ABH had different roles. ABH I threw stones at the victim but did not injure him, ABH II and III guarded the motorcycle on the side of the road, and Child IV chased the victim with a sharp weapon. Therefore, the Public Prosecutor was of the view that their actions were included in the criminal offense listed in Article 358 on the crime of participating in an assault or fight.

In addition, based on the legal facts revealed that the actions committed by the ABH have fulfilled the elements in Article 358 paragraph (2) of the Criminal Code, which include:

a. Elements of Who

That the public prosecutor has presented in the trial the alleged perpetrators of the criminal offense, four children including ABH I, ABH II, ABH III, and ABH IV.

b. Element Intentionally

In criminal law, willfulness is defined as intending and knowing. This means that a person who commits an act intentionally, must intend what he does and must also know what he is doing and its consequences. (Utoyo, 2020). The ABH basically knew that their actions could cause physical damage to the victim, and the actions were carried out not because of a reflex state but intentionally as evidenced by the initiative of the perpetrators.

c. Element of Participation in an assault or fight in which several persons are involved.

Based on the chronology, each child has a role that ABH I threw stones at the victim, ABH II and ABH III had a role to wait while guarding the motorcycle on the side of the road, when their position was chasing on the railroad tracks; ABH IV chased the victim (child) and his friend while carrying a sharp weapon type samurai but was not used to injure the child victim. Therefore, it fulfills the element of participating in a criminal offense. Element If as a result of the assault or fight someone is seriously injured, or if as a result someone dies.

The actions of the children resulted in the victim (RRAP) being injured and died, based on the Visum Et Repertum of the body Number: R/05/SK2/2022/RSU Sekarwangi dated August 16, 2022.

Thus the ABH were found guilty of violating Article 358 paragraph (2) of the Criminal Code as outlined in the verdict:

- 1) Stating that ABH I, ABH II, ABH III, have been legally and convincingly proven guilty of committing the crime of "Intentionally participating in an attack that resulted in death" and ABH has been legally and convincingly proven guilty of committing the crime of "Intentionally participating in an attack that resulted in death and Without the Right to Carry Sharp Weapons", as in the Public Prosecutor's Indictment;
- 2) Sentenced to imprisonment in LPKA Bandung to ABH I, ABH I, ABH III for 6 (six) months each and ABH IV for 7 (seven) months.

Court Decision Number 1/Pid.Sus-Anak/2023/Pn Skb

In the case of participating in a brawl involving several children including ABH I, ABH II and ABH III, where all of these children were involved in a brawl which resulted in the victim, a 14 (fourteen) year old child, being seriously injured and died. The public prosecutor filed alternative charges including the first charge of Article 170 of the Criminal Code, the second charge of Article 351 of the Criminal Code and the third charge of Article 76C in conjunction with Article 80 of Law No. 35 of 2014 on Child Protection. Then based on the legal facts among all the charges filed by the public prosecutor, the ABH were found guilty of violating Article 76C in conjunction with 80 of Law 35 of 2014. This is based on the fact that the criminal offense is a certain event that has been specifically regulated in the law. From the results of the interview with Fera Mila Mustika, S.M.,M.H. she argued that in the brawl case involving ABH I, ABH II, and ABH III, the public prosecutor applied Article 70C in conjunction with Article 80 of Law Number 35 of 2014 concerning Child Protection because based on the facts of the trial the victim of the incident was a minor, which relates to every incident of criminal acts of violence whose victims are minors, It is necessary to use a special law governing child protection with the application of the principle of *lex specialist derogat legi generalis*, because the incident of violence is an event that has been specifically regulated by Law Number 35 of 2024 Amendment to Law Number 23 of 2002 concerning child protection.

Thus, the application of the material law of the event is supported by the application of the principle of *Lex specialis derogat legi generalis*, where special laws on child protection can override our criminal law laws that are commonly used in solving criminal cases committed by adults. Based on the legal facts revealed in the trial, the actions committed by the child have fulfilled all the elements in the formulation of Article 76 C in conjunction with Article 80 of Law 35 of 2014, namely:

a. Element of every person

In the trial, children who were suspected of having participated in committing criminal acts of violence against children, namely ABH I, ABH II, and ABH III, each of whom was not yet 18 (eighteen years old).

b. Elements Prohibited from placing, allowing, committing, ordering to commit, or participating in violence against children

In the case, each Child has a role where ABH I plays a role in dueling fights, ABH II plays a role in recording the events of the dueling fights on live streaming, and ABH III as a jockey / driver of ABH I and ABH II to the location where the fight took place. So, this element can be fulfilled and proven by the respective roles of the perpetrators in the incident.

c. The element of causing death

The victim was seriously injured and died after being hospitalized for one day, based on the results of the Visum et Repertum P/Ver/02/03/2023/RSAM dated March 28.

Therefore, all ABH must be found in violation of Article 76 C in conjunction with Article 80 of Law 35 of 2014 as stated in the verdict No.1/Pid.Sus-Anak/2023/Pn Skb:

- 1) Stating that the children, namely ABH I, ABH II and ABH III, are legally and convincingly proven guilty of committing the crime of participating in violence against children resulting in death, as in the first alternative charge;
- 2) Sentenced the children, namely ABH I to four years and six months imprisonment in LPKA Class II Bandung; ABH II to three years and four months imprisonment in LPKA Class II Bandung; and ABH III to two years imprisonment in LPKA Class II Bandung and vocational training at the Marsudi Putra Social Rehabilitation Center (BRSMP) Cileungsi Bogor for six months.

CONCLUSIONS AND REKOMMENDATIONS

The application of material law using Article 358 paragraph (2) of the Criminal Code against child perpetrators of brawls that resulted in death in decision Number 14 / Pid.Sus / 2022 / Pn CBD is not appropriate. This is because the public prosecutor does not pay attention to the status of the victim who is still in the category of minors, where it is very necessary to apply the child protection law as a legal basis. Meanwhile, regarding the application of material law in decision No.1 / pid.sus - child / 2023 / pn SKB is in accordance with the provisions, because the application of *lex specialis derogat generalis legi* in the special event of a brawl which resulted in the death of a minor victim by using a

special law governing violence against children, namely Law Number 35 of 2014 concerning Child Protection. Thus, it is hoped that law enforcement officials will have a common perception in terms of responding to criminal cases of participation in brawls regulated in general and special material laws in order to apply the principle of *lex specialist derogat legi generalis* so that there is no multi-interpretation of the law.

ADVANCED RESEARCH

Researchers are advised to examine phenomena that occur in society related to the application of laws that do not yet contain legal certainty. Moreover, for researchers who are interested in researching relevant topics, it is advisable to develop the object of study by examining other roles besides the *mede pleger* which are included in the participation (*deelmeening*) in criminal acts.

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