

The Implementation of the Juvenile Justice System in Terrorism: Indonesia Case

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ABSTRACT: This research aims to review the right to child protection as well as the implementation of the Juvenile Criminal Justice System (SPPA) based on court rulings. Behind the research is concern about the increasing number of children involved in terrorist networks in Indonesia. Some of them have been sentenced to prison for terrorism plots. The implementation of the UU SPPA and the UU PA has become a reference for law enforcement in addition to counter-terrorism legislation. The crime of terrorism is a crime that must be addressed immediately because it threatens the state, but the state remains obliged to ensure the fulfillment of the right to child protection during the judicial process with special protection. With the involvement of a child that is in relevance to the child protection act, it is a complex matter that needs to be resolved with a special analysis of law, due to its nature. This study examines court rulings with normative juridical methods to get significantly achieved results. In addition, this study also adds secondary resources such as article journals, books, reports and any source that has relevance to the study. The results of the study found that the special protection of children in the crime of terrorism has not been met, by not considering the child as a victim, because of the actions he did the influence of persuasion as revealed in court. In addition, law enforcement does not seek diversion as mandated in the SPPA. To conclude that the court's decision does not consider the regulations on UU PA and has not fully implemented the SPPA.

KEYWORDS: Legislation on Terrorism, Children's Rights, Juvenile Justice.



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I. INTRODUCTION

Networks and acts of terrorism do not only involve adults. Terrorism has also persuaded and instructed children to be part of its group. Even later, the number of children who entered the network and acts of terrorism is increasing.¹ Note the Peace Inscription Foundation, a Non-Governmental Organization that assists children affected by terrorism, that from 2015 to 2020, there were 19 (nineteen) problems of children dealing with terrorism laws in Indonesia.² Only 3 (three) issues are resolved through the diversion process of the above cases. While 4 (four) children are still serving criminal charges at the Special Children's Penitentiary (*Lembaga Pembinaan Khusus Anak*), 3 (three) children are serving crimes in the Penitentiary (*Lembaga Pemasyarakatan*), and 8 (eight) children are free.³ From the case resolved through diversion, one child is again involved in acts of terrorism and is currently languishing in *Lembaga Pembinaan Khusus Anak*. One child who had been rereleased repeated his deeds and was killed during the arrest by *Detasemen Khusus 88 Anti-Terror*.

The reasons for a child's involvement in a network or act of terrorism are usually very diverse, complex, and highly dependent on local context and other supporting factors, including indoctrination through social media.⁴ Another reason is that terror groups have difficulty recruiting new members from adults, so children are targeted because of their emotionally unstable nature. Their thoughts

¹ Olif Skear Prabasini, "Legal Protection for Children in Conflict with the Law: Process and Problems" (2021) 3:3 *Indones J Int Clin Leg Educ* 381–398 at 385

² Indah Setyowati & Ida Musofiana, "Juridical Studies Against Diversion in Criminal Justice System" (2020) 6:2 *J Pembaharuan Huk* 239–253 at 241

³ *Ibid* at 242.

⁴ Oksidelfa Yanto et al, "Legal Protection of the Rights of the Child Victims in Indonesian Juvenile Criminal Justice System" (2020) 23:01 *J YUSTIKA MEDIA Huk DAN KEADILAN* 24–35 at 29.

will be straightforward to persuade. In addition, religious reasons about the misrepresentation of the "*call to jihad*" will raise heroic spirits so that children are interested in joining terrorism networks and engaging in their actions.⁵ In particular, no one has regulated the problem of children as perpetrators of terrorism crimes. However, this provision applies specifically to adults who commit terrorism crimes involving under 18 years. Children's criminal requirements and sanctions as perpetrators have not been explicitly in this law.⁶

Therefore, the state has made specific child regulations contained in Law Number 11 of 2012 concerning Juvenile Criminal Justice System (hereinafter referred to as UU SPPA) or *Sistem Peradilan Pidana Anak* (hereinafter referred to as SPPA) and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter referred to as UU PA). So that the prosecution carried out by immature perpetrators in terrorism crimes must also follow the provisions contained in both laws and legislation on Countering Terrorism Crimes. As above, the author conducted a study by reviewing Case No. 08/Pid.Sus.Anak/2017/PN.Jkt.Tim, to see how to fulfill the rights of children who violate the law in the criminal act of terrorism?; and is the decision appropriate in the Juvenile Criminal Justice legislation?

II. METHODS

This study uses normative law by examining the implementation of normative legal provisions in their behavior in all legal cases in

⁵ Wawan Edi Prastiyo & I Ketut Rai Setiabudhi, "Children Involvement in Terrorism Activities: Perpetrator or a Victim? (A Study in the Circle of Violence)" (2021) 8:2 PADJADJARAN J Ilmu Huk (Journal Law) 213–231 at 217.

⁶ Sumarwoto, Mahmutarrom & Ifrani, "Deradicalisation to Combat Terrorism: Indonesia and Thailand Cases" (2020) 4:2 Sriwij Law Rev 249–260 at 252.

society. According to Irwansyah, legal research requires a confident approach as a basis for developing appropriate, logical, and accurate legal arguments. On the other hand, using legal, case, historical, comparative, and conceptual approaches in legal research.⁷ Thus, this research uses judicial case studies, which is a legal case approach due to conflict that will involve intervention with the court to provide legal starch. The study also analyzed related primary and secondary data. The main legal sources, namely laws and regulations, records or official records of the development of rules and regulations, and court decisions. The secondary legal sources, namely data or information obtained through the publication of laws, books, journals, dictionaries, and court decisions. In this study, the data was taken from the literature study, which is the source of data obtained from the study of court rulings, official documents, some literature, and reference sources that can be this writing.

III. CHILD PROTECTION POLICY: QUO VADIS?

The child is a gift of God Almighty, and it should be protected; because of the dignity and dignity attached to it. Children have an essential role in the future development of society, country, and the world, so the progress of a nation's development depends heavily on how the government treats children and protects their rights.⁸ Understanding the important position of the child in such development, through the Convention on the Rights of the Child (hereinafter referred to as CRC), the United Nations (UN) respects

⁷ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 13th ed (Jakarta: KENCANA, 2017) at 23.

⁸ Syafrudin Kalo Mahmud Mulyadi, M Ekaputra, Lidya Gultom, "Criminal Liability Against Children as Offenders of Narcotics Abuse Based on The Decision of The Tebing Tinggi District Court No. 21/PID.SUS-ANAK/2018/PN.TBT" (2021) 3:1 Res Nullius Law J 55–78 at 65-67.

and guarantees the rights of non-discriminatory children of any kind, regardless of race, gender, color, religion, and language.⁹ The child referred to in this Convention shall be any person under the age of eighteen, if deemed an adult under applicable law.

In general, the rights of children in CRC are grouped into four parts,¹⁰ namely: (a) The right to survival, that is, the right to life and the right to the highest possible health and good care; (b) Right of protection, namely by including the right of protection, discrimination, violence, and neglect for children who do not have a family and for refugee children; (c) The right to development, i.e., the right of the child, including all forms of education (formal and informal), and the right to a decent standard of living for mental, spiritual, moral, and social development; (d) Right to participate, which is the right to participate, which is the right of children including the right to freedom of expression about the influence of children (the right of children to express their opinions about all matters affecting the child freely). The right to participate in the child's right to the development of identity, the child's essential culture in childhood, and the involvement of the wider community.

CRC encourages states to protect children's rights in the form of community justice enforcement.¹¹ So that child protection will have legal consequences, whether written or unwritten. The presence of regulation will create a more precise, measurable right-to-rights. To fulfill rights should also not be given excessively, resulting in the loss

⁹ Ellen Desmet, Eva Brems & Wouter Vandenhole, eds, *Children's Rights Law in the Global Human Rights Landscape: Isolation, Inspiration, Integration?* (London: Taylor & Francis, 2017) at 80.

¹⁰ *Ibid* at 81.

¹¹ Ursula Kilkelly, "The UN convention on the rights of the child: incremental and transformative approaches to legal implementation" (2019) 23:3 Int J Hum Rights 323–337 at 330.

of initiative and creativity and creating dependence on others. Indonesia has ratified CRC with Presidential Decree Number 36 of 1990 on Ratification of the Convention on the Child's Rights. By agreeing to the CRC, Indonesia has bound the *pacta sunt servanda* principle to uphold CRC provisions, including respect and protection to children, to avoid violence and neglect in social environments.¹² This commitment was further strengthened by including children's issues in the second amendment of The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945); Article 28B paragraph (2) UUD NRI 1945 clearly states that Indonesia has also approved two electoral protocols against the CRC through Law Number 10 of 2012; which adopts the Convention on the Rights of the Child related to child trafficking, child prostitution, and child pornography; and also Law Number 1 of 2000 on the Ratification of ILO Convention No. 182 on Prohibition and Immediate Action on the Elimination of the Worst Forms of Work for Children.¹³

Previously, Human Rights and Basic Human Freedom Chapter III of Human Rights Law No. 39 of 1999 has specifically regulated children's rights.¹⁴ The section entitled "Convention on the Child's Rights" contains the careful provisions contained in 15 articles. Article 52, paragraph (2) of Law No. 39 of 1999 states that the child's right is a human right, and the child's right is recognized and protected by

¹² Zendy Wulan Ayu Widhi Prameswari, "Ratifikasi Konvensi tentang Hak-Hak Anak dalam Sistem Peraturan Perundang-Undangan di Indonesia" (2017) 32:1 Yuridika 167–188 at 179.

¹³ Debby Kristin & Chloryne Trie Isana Dewi, "The Rights of Children Refugee in Transit Country Under The CRC, A Case of Indonesia: An Intended Negligence?" (2021) 5:1 Padjadjaran J Int Law 114–136 at 116.

¹⁴ Titin Prialianti, "Legal Protection of The Rights of The Child Conflict with The Law in Criminal System in Indonesia" (2018) 1:3 J Daulat Huk 801–806 at 804

law from the moment he is born.¹⁵ Law No. 4 of 1979 aims to ensure the welfare and future of children. Along with the dynamics of the development of issues about children, the Government of Indonesia continues to increase its efforts in implementing and ensuring the protection and welfare of children through the provisions of UU PA.¹⁶ This law has been amended two times; with UU PA and Law No. 17 of 2016.

The policy on child protection is also contained in various other laws and regulations; such as in the Marriage Law, which stipulates that the minimum age of marriage for men and women is 19 years;¹⁷ and the minimum age to marry was 16 years. Furthermore, the Law on Local Government mandates each region to fulfill children's rights and child protection. Moreover, Presidential Regulation No. 18 of 2020 on National Medium-Term Development Plan; includes a national development priority program for child protection. In general, the safety of children can be divided into two characteristics: It is juridical and extrajudicial. Child law protection includes protection in the field of public and civil law.¹⁸ Extrajudicial includes fulfillment in the areas of social, health, and education.¹⁹ The protection is based on the fact that children still have limitations in terms of physical ability and maturity of thinking. This is because the child does not have enough knowledge to protect themselves. Children also still have a strong desire for adults regarding attitudes and actions.

¹⁵ Bernadeta Resti Nurhayati, "Constitutional Basis for the Civil Rights of Illegitimate Children" (2017) 1:2 Pattimura Law J 118–130 at 121.

¹⁶ Prameswari, *supra* note 12 at 185.

¹⁷ Rudyanti Dorotea Tobing, "Prevention of Child Marriage Age in the Perspective of Human Rights" (2018) 2:1 Sriwij Law Rev 1–17 at 11.

¹⁸ Ashley Phillips, "How to End the Cycle of Domestic Violence: Policies Focused on Children" (2021) 9:1 Child Fam Law J 57–76 at 61.

¹⁹ *Ibid* at 65.

UU PA regulates the particular provision of children in emergencies;²⁰ it was against the law, possible came from:²¹ (i) a minority group, and was isolated; (ii) Exploited economically or sexually, victims of narcotics abuse, pornography, HIV/AIDS; kidnapping, sales, trafficking; (iii) Physical and psychic violence and sexual crimes; (iv) terrorist networks; (v) Persons with disabilities; (vi) harassment; (vii) and deviation of social behavior. So, who are the victims of stigma from labeling related to the condition of their parents? Child protection is facing the law as a person who is not capable or unstable, a child faces a difficult time committing unlawful acts.²² However, children breaking the law do not deserve punishment, let alone being thrown into custody. The child who is intended to face the law is 12 (twelve) years, but not yet 18 (eighteen) years old has not committed a criminal offense.

Special protection is based on the fact that criminal law cannot be held accountable like an adult, given the right to a fair trial and different criminal provisions. Stricter provisions regarding reasonable practices and sentences for children facing the law are based on the idea that the next generation still has many opportunities to develop themselves. Therefore, special protection in the judicial process and criminal verdicts must be oriented to the child's interests and his future; we can say that exceptional safety of children is faced with the law as a form of affirmative action based on Article 28 H paragraph (2) of the UUD NRI 1945 states that "Everyone is entitled to special facilities and treatment to obtain opportunities and benefits to achieve equality and justice." Thus, the reflection of this provision is the creation of UU SPPA.

²⁰ Edi Prastiyo & Rai Setiabudhi, *supra* note 5 at 225.

²¹ Desmet, Brems, & Vandenhole, *supra* note 9 at 98.

²² *Ibid* at 99.

UU SPPA is a certainty about the state's commitment to the importance of the legal umbrella for children who face the law.²³ This has changed the paradigm of child prosecution from a retributive justice approach to a restorative justice approach. So that the handling of children involved in legal cases must be distinguished from adults because the penal system is considered not in line with the spirit of protecting rights in the CRC. SPPA is interpreted as a process of resolving children's cases facing the law, ranging from investigations to assistance after undergoing criminal charges.²⁴ SPPA has significantly changed the paradigm of imprisonment to be more child-friendly by encouraging the application of restorative justice. Restorative justice is defined as the effort to solve criminal problems involving victims, perpetrators of the perpetrator's family/victims, to seek and resolve fairly to emphasize recovery in the original state and not retaliation.

Important aspects of child enforcement under the UU SPPA are: justice, non-discrimination, protection, interests for the child, respect or respect the child's proposals, the survival and development of the child; nurturing, guiding children, comparable, freedom, punishment as a last resort.²⁵ Children's rights must be fulfilled as a form of special protection, namely human treatment with needs equal to age, torture, punishment or inhuman or degrading cruel treatment, separation from adults, and coercion, avoid the death penalty and life imprisonment, arrest, detention, or imprisonment. However, unless

²³ Wikan Sinatrio Aji, "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia" (2019) 4:1 JILS (Journal Indones Leg Stud 73–88 at 80.

²⁴ Setyowati & Musofiana, *supra* note 2 at 244.

²⁵ Muhaimin Muhaimin, "Reconstruction of The Juvenile Criminal Justice System and The Giving of Diversion" (2021) 21:2 J Penelit Huk Jure 253–266 at 263.

it is as short as possible, it is a last resort. Other rights that they must also fulfill are recreational activities, health and education services, and providing private space for him, including not being allowed to publish children's identity. Children are also entitled to adequate, impartial, and objective legal assistance in private hearings, parental or guardian support, and social advocacy during handling cases. Children with disabilities need to meet their accessibility needs.

In line with the spirit of restorative justice in t, law enforcement officials are encouraged to make efforts to avoid stigmatizing children who violate the law lest they be tried. Thus, the involvement of all parties is necessary to make it happen. This process should be aimed at realizing restorative justice for children and victims. One form of restorative justice implementation is through diversion. Diversion is a process outside criminal justice that resolves a child's problems through a criminal justice process.²⁶ The diversion regulations are regulated explicitly in Articles 6-14 of the UU SPPA, which aims to achieve peace between victims and children. Resolve cases out of Court, avoid detention, engage with the community and promote child accountability. UU SPPA requires investigators to make diversion efforts first at all levels. Nevertheless, the UU SPPA states what can make diversion if a child is sentenced to less than seven years in prison and commits a non-recurring offense, who cannot execute against the child. According to the provisions of Article 6, letter a, diversion regulated by the UU SPPA is essentially a peace agreement between the perpetrator and the victim or an agreement between the victim's family and the child and the child's family.

²⁶ Sriwiyanti, Wahyu Saefudin & Siti Aminah, "Restorative Justice for Juvenile Offenders in Indonesia: A Study of Psychological Perspective and Islamic Law" (2021) 2:2 JIL J Islam Law 168–196 at 175.

Therefore, diversion is the key to success in a peace deal. In the event of a diversion agreement, the diversion procedure involves the parties, among others;²⁷ investigators, public prosecutors, and judges who make peace efforts with the child and their parents/guardians, the victim or the parent/guardian, community advisors, and professional social workers. In addition, the success of community research from the Penitentiary is also an important consideration, in addition to of course support from the community in settlement of children's cases; who must enter the result of diversion into a peace treaty forwarded to the court decision to be taken.²⁸ There are at least 4 (four) forms of diversion results, namely reconciliation and compensation, to submit to parents or families, participate in education and training to *Lembaga Pembinaan Khusus Anak* for a maximum of 3 months.²⁹ Diversions can be made if the requirements are met by involving community counselors and without the consent of the victim or the victim's child's family. Under these circumstances, the case the violation is committed is an offense, the value of a misdemeanor, a non-victims crime, or damage caused by a breach not exceeding the national minimum wage.

IV. CHILD'S IMPRISONMENT IN TERRORISM OFFENCES: CASE, JUDGEMENT, AND ANALYSIS

Children who engage in networks or acts of terrorism have legal consequences. But on many issues, children dealing with the Law in the crime of terrorism usually do not act as initiators or initiators.

²⁷ Sasmita Adika Candra, Rodliyah Rodliyah & L Parman, "The Best Interest of The Child Principle in The Juvenile Justice System" (2019) 6:4 Int J Multicult Multireligious Underst 490–505 at 500.

²⁸ Anna Holzscheiter, Jonathan Josefsson & Bengt Sandin, "Child rights Governance: An Introduction" (2019) 26:3 Childhood 271–288 at 280.

²⁹ Setyowati & Musofiana, *supra* note 2 at 246.

Although not fully accounted for a crime, children faced with terrorism laws are considered participating.³⁰ Participation is the most crucial thing to determine the accountability of criminals in an offense that has contributed to a crime. The inclusion of the perpetrators (daggers) consists of elements: they do (plan), they tell to do (*doenplegen*), participate in doing and have the same purpose (*medeplagen*), and those who pay, promise, and deliberately persuade (unlockers).³¹ In addition, join in assisting (*medeplechtige*), which is assistance. Understanding to assist before and at the time of a criminal act is, in essence, one action that does not include carrying out a criminal act; but, an act that facilitates the occurrence of crime by enabling the implementation of the crime.

Article 16A of Law No. 5 of 2018 on Amendment to Law No. 15 of 2003 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 on Eradication of Criminal Acts of Terrorism (hereinafter referred to as UU Teroris) and Article 55 *jo*. Article 56 of the Criminal Code (*Kitab Undang-Undang Hukum Pidana*) mentions the inclusion (*deelneming*) or inclusion act. This article is expressed as follows, "Any person who commits a criminal act of terrorism involving a child." Thus, there are two kinds of possible child participation: *medeplegen* (participant actor) or *medeplechtige* (giver of assistance). Although Articles 14 and 15 of the UU Teroris in some articles normatively equate criminal accountability by not distinguishing the number of dues in the formulation of the article. Law enforcement authorities see a distribution of contributions; or the concept of inclusion in criminal law.³²

³⁰ Sumarwoto, Mahmutarrom & Ifrani, *supra* note 6 at 254.

³¹ Edi Prastiyo & Rai Setiabudhi, *supra* note 5 at 220.

³² Samsul Arifin, "Perlindungan Hukum Terhadap Anak Dalam Tindak Pidana Terorisme" (2020) 5:1 J Panor Huk 49–62 at 56.

This is not especially true for child abusers; because, when considering judges in adjudicating children, it should be noted that following the principles of child protection law, they have to think about the child's best interests. Referring to the concept of inclusion in the Criminal Code (*Kitab Undang-Undang Hukum Pidana*), UU SPPA, and UU PA, the punishment imposed on children must be seen from the background, contribution, and role in the event of terrorism crimes. Moreover, based on the UU SPPA, prison is the last option of many primary criminals that children can drop; other basic violations are conditional offenders with warnings, off-site coaching, community service, or supervision.³³ Other basic crimes can be the training and coaching of the profession in educational institutions. In addition to general criminals, other criminals can be imposed on children in the form of deprivation of profit from the crime problem with the fulfillment of customary obligations.

"Habitual obligation" means a fine or action that must be taken following the enactment of local norms, while upholding values that do not harm and endanger the physical or mental health of the child. The UU SPPA also opens the possibility to implement sanctions measures.³⁴ Therefore, the public prosecutor can apply for sanctions if in his complaint unless the act is threatened with a prison sentence of at least seven years. Actions that can be imposed on children include a return to parents/guardians, submission to someone, treatment in mental hospitals, treatment from *Lembaga Pembinaan*

³³ Sausan Afifah Denadin, Andi Najemi & Nys Arfa, "Pendekatan Diversi dalam Sistem Peradilan Pidana Anak (SPPA)" (2021) 2:2 PAMPAS J Crim Law 29–45 at 38.

³⁴ Diah Ratna Sari Hariyanto & Gde Made Swardhana, "Optimalisasi Pelaksanaan Diversi dalam Sistem Peradilan Pidana Anak yang Berorientasi Pada Restorative Justice di Kota Denpasar" (2021) 18:3 J Legis Indones 394–404 at 400.

Khusus Anak, and must be present in one of the governments or government agencies, formal education and training organized by the private sector and prohibited driving or damages for criminal acts.³⁵ In the UU Terroris, several articles of punishment of fewer than seven years in prison. As a result, children who engage in terrorist criminal activities can also be subject to severe sanctions. The involvement of children in acts of terrorism should still be classified as victims as long as they are under the age of 18. It is based on children's involvement in terrorist crimes coming at the expense of networks, doctrines, propaganda, and invitations from adults.

Under UU PA, children who are victims of terrorist networks are entitled to special protection as stipulated in the provisions stating "Special Protection for Children as referred to in paragraph (1) is given to children victims of terrorism networks". So, referring to the provision, children who engage in terrorist acts are not tried like adults who end up in prison. Even if the Law is processed, the sentence should not constitute a prison sentence because children who are victims of terrorist networks are entitled to special protection in nationalism education, ideology, values, advice about the dangers of terrorism, social rehabilitation, welfare. The burden of criminal punishment for the child's actions should go back to the parents. So, if the parents are caught, the punishment will be added. Including one weight can be added 1/3 of what it dropped like 12 years. That means plus 1/3 to 15 or 16 years.

Based on various opinions and legal references above, determining the system of child enforcement dealing with terrorism laws should refer to the Law on combating terrorism crimes. It is also essential to

³⁵ Azwad Rachmat Hambali, "Penerapan Diversi terhadap Anak yang Berhadapan dengan Hukum dalam Sistem Peradilan Pidana" (2019) 13:1 J Ilm Kebijak Huk 15-30 at 19-21.

look at the Juvenile Criminal Justice System and Child Protection legislation regulations. East Jakarta court decision No. 08/Pid.Sus.Anak/2017/PN.Jkt.Tim is a case committed by a child on behalf of DG as Ali, who, according to the Panel of Judges, was proven legitimately and convinced to have "deliberately provided assistance or convenience to the perpetrators of terrorism crimes by hiding information; about terrorism crimes." In his actions, DG has violated Article 13 letter c of government regulation which replaces Law No. 1 of 2002 on Combating Terrorism Crimes stipulated in Law No. 15 of 2003 on Terrorism Crimes Act. The Panel of Judges has sentenced DG to prison for one year reduced during detention with a child in custody.

Briefly explained based on the facts of the trial, that Anak was involved in this case after a person named Marhaban Gobel aka. Aban who is referred to as the father of DG, introduced him to someone referred to as his cousin named Efendi Gobel aka Endi aka Abu Niswah (hereinafter called Abu Niswah) at the end of January 2017 at Baitul Rahman Mosque, Poso. Many witnesses mentioned Abu Niswah in the trial as the Anchor Islamic State Baqqiya Poso region leader; and by Abu Niswah, DG was asked to come out of the Memorization Cycle of the Qur'an (the institution to produce the Qur'an or traffic of the Quran) and join his group (Anchor Daulah Islamiah Baqqiya). However, it has not been approved by DG. DG expressed willingness to join and exit Sarah Memorization of the Quran and his school after Abu Niswah explained various stories about his network in Malaysia and his friends' desire to help him commit *remaliah* (acts of terrorism).

Abu Niswah also invited DG to watch videos of the Muslim massacre videos. Furthermore, Abu Niswah explained to DG the plan to steal firearms by committing theft and assault to *Gegana Satuan Brimob*

Poso headquarters. The child agrees and supports the project. The reason for his approval is based on wanting to uphold Islamic sharia. After blending, DG no longer lived with his parents; but with Abu Niswah. Before meeting Abu Niswah, DG gained understanding, knowledge, and teachings of *jihād* from Facebook social media that posted invitations to *jihād*. DG has a Facebook account, "ABU QOIS," and often gets posts from several groups, including *Fisabilillah*, *Anti Though*, *Tawhid*, and Islamic State. Posts in the group primarily teach and invite *jihād* by fighting physically (*qital*) using weapons. DG also understood *jihād* from Samsudin aka Sam, the leader of the Islamic State of the Toli-Toli region. In early February 2017, Abu Niswah held a meeting at Al Azhar Mosque, Poso complex. The meeting was attended by nine people who had been recruited by Abu Niswah before, including DG. The conference aimed to perform *bai'at* (oath of allegiance) to the Islamic State under Abu Bakr Al Bagdadi. In the *bai'at* reading, DG was asked to read the *bai'at* text by Abu Niswah followed by other participants.

Although asked to read it, DG does not know the purpose of the *bai'at*. *Bai'at* readings were also recorded by someone named Iwan using a mobile phone belonging to another meeting participant. After reading *bai'at*, officially, Anshor Daulah Islamiyah Poso region consists of ten people. One of the members, named Aldino, became a member but was not present at the *bai'at* event. The group's vision and mission are to uphold Islamic Sharia in Poso through *jihād* against those who stand in the way of the struggle by using firearms, explosives, and sharp weapons. Post *bai'at*, Abu Niswah conveyed the *amaliah* plan in the form of gun theft at *Brimob* Poso Headquarters. Abu Niswah ordered five of his members to conduct a survey. Children are not involved in surveys and do not know how many times the survey was conducted.

A few days after *bai'at*, Abu Niswah contacted Samsudin, aka Sam to come to Poso to discuss the *Ramallah* plan. But the plan was opposed by Sam; because he considered it too risky. *Amaliyah*'s program was then transferred to Toli-Toli considering the number of fewer officers and small towns. In addition, Tolitoli is planned to be used as a form of *takmin* (territory) of the Islamic State. Sam proposes to carry out the mapolres Toli-Toli bombing and seize firearms. The child did not know who, when, and how the explosives were collected. Information about the explosives was only discovered after DG was arrested by *Detasemen Khusus 88 Antiterror* (Indonesian Anti-Terrorism Police-force). After being detained, DG was imprisoned at Salemba's Temporary Placement Agency from March 11 to April 23, 2017.

From the facts of the trial, DG knew the impact that would be caused if the materials were mixed and assembled so that they became explosive. Then the bomb is used to attack the Toli-Toli Police, which will cause casualties, both injured and loss of life to anyone affected by the explosion and can cause damage to property as a result of the bomb explosion. DG also wants fatalities and property when carrying out the Toli-Toli police raid using these explosives. Initially, the Public Prosecutor charged DG with three alternative charges, namely criminal threats as stipulated in Articles 15 and 7, Articles 15 and 9, and Article 13 of Government Regulation in place of Law No. 1 of 2002 on the Elimination of Terrorism Crimes under Law No. 15 of 2003. But, the public prosecutor's demands were only found guilty of terrorism crimes as in the third indictment of Article 13 letter c Perppu No. 1 of 2002 concerning the Eradication of Terrorism Crimes as stipulated in the Eradication of Terrorism Crimes.

Prosecutors also demanded that the child be sentenced to 3 years in prison minus the prison sentence so that the order of the child

remains in custody. While the evidence in the form of a red Nokia brand mobile phone is returned to DG and charged Rp. 5,000 (five thousand rupiah). Before deciding this case, the Panel of Judges had considered various matters, namely both DG and Legal Counsel in terms of not submitting exceptions to the Public Prosecutor's indictment and had heard the Community Research report read by the Community Officer. The Panel of Judges has also heard testimony from witnesses presented by the Public Prosecutor as many as 11 (eleven) witnesses. One of the witnesses, Samsudin aka Sam, declared that the child was innocent.

Before joining, Abu Niswah showed a video about the massacre of Muslims, including explaining about the Abu Niswah network in Malaysia which is said to be willing to help to perform *Amaliyah*. Abu Niswah also explained the *Amaliyah* he would do to attack the Headquarters of *Brimob* Poso to take weapons. For this story, DG expressed his agreement and support for *Amaliyah's* plan and declared his exit from the Quran memorization cycle and his school. In addition, DG also gained understanding through Samsudin aka Sam about the proposition of the Qur'an and hadith about *jihad*. After agreeing, DG no longer lives with his parents, but with Abu Niswah. The Panel of Judges also conveyed another consideration, namely that DG had only joined the Islamic State group for 3 (three) months, from the time it was made up until it was caught. DG was asked to recite a *bai'at* pledging allegiance to ISIS leader Abu Bakr Al Bagdadi, although he did not know the purpose of the *bai'at*. In its consideration, the Panel of Judges mentioned that the Son in the deepest heart was not willing to participate in *Amaliyah*, but there was a threat that if he came out of *bai'at* it would become an apostate.

From the legal events revealed in court, the panel of judges stated that of the three alternative charges submitted by the Public Prosecutor

there is a conformity with the actions of DG as referred to in Article 13 letter C Government Regulation in lie of Law No. 1 of 2002 on Combating Terrorism, the elements of which are as follows: (1) Everyone; (2) Those who intentionally provide assistance or facilities to perpetrators of terrorism; and (3) Hiding information about terrorism. The consideration, the Panel of Judges has listened to the recommendations of community officers who read out the community research report so that children are sentenced to criminal development as stipulated by Article 71 of the UU SPPA because considering that if done by children it will harm the community in such a way as the targets of actions to be carried out by children and their groups. Based on the facts of the law, the panel of judges stated that the actions of the child were not found to be mitigating things against the child against the crimes committed, thus the child should be punished.

As for the incriminating things because actions or actions do not help the government's efforts in combating terrorism and cause fear for the wider community. While the mitigating factor is that DG is never punished, behaves politely in court, regrets, and will not repeat his actions and still attend school. In consideration of the verdict, the judge stated that DG was found legally guilty of committing the crime of "Terrorism" and sentenced him to one year in prison. Evidence in the form of a red mobile phone was returned to DG, while other evidence included in the case of other defendants was made and charged a court fee of Rp.5,000 (five thousand rupiah). The analysis of this verdict was carried out since DG experienced arrest and detention in the stages of reaching court. This is inseparable from Article 1 Paragraph (1) of the UU SPPA.

In this case, DG was arrested and detained from March 11, 2017, to March 18, 2017, at *Lembaga Penempatan Anak Sementara*, Jakarta.

However, *Lembaga Penempatan Anak Sementara*, Jakarta is not yet available so the Prosecutor's Office, placed in *Lembaga Pembinaan Khusus Anak* Class I, Jakarta as a temporary placement place during the investigation and trial process. The detention was carried out because DG was 16 years old and suspected of violating terrorism crimes was threatened with 20 years imprisonment following Article 32 Paragraph (2) letters a and b UU SPPA. Therefore, against DG is not done diversion as stipulated in the UU SPPA. DG is also accompanied by legal counsel and community officers during the examination. Therefore, the author argues that this investigation stage follows the UU SPPA so that it is possible to interact directly with adult inmates of terrorism cases held in the place. Because, after undergoing the introduction period of the environment (*Mapenaling*), DG can get out of isolation and interact with adult inmates of terrorism cases..

Among them is DG influenced to be uncooperative with *Lembaga Pembinaan Khusus Anak* officers. Including uncooperative during the trial process. DG was also ordered to fight the judge during the trial process. In the examination process at the trial, the author argued that the Public Prosecutor and the Judge have not thoughtfully implemented legislation regarding SPPA, primarily related to the implementation of diversion. Article 7 UU SPPA reads, "*At the level of investigation, prosecution, and examination of child cases in the district court shall be attempted diversion.*" Especially in the aftermath of the Public Prosecutor in his lawsuit only applies Article 13 letter C of Law No. 15 of 2003 on the Establishment of Government Regulations in place of Law No. 1 of 2002 on Combating Terrorism Crimes with the threat of imprisonment of at least 3 (three) years and a maximum of 15 (fifteen) years in prison.

Based on Article 81 paragraph (2) and Article 79 paragraph (2) of the UU SPPA which stipulates the sentence can be imposed on children is a maximum imprisonment of 20 years against adults. So the author argues that the Public Prosecutor and the Panel of Judges should be obliged to seek diversion. Furthermore, the author argues that the Panel of Judges in its consideration does not entirely refer to the legislation regarding Child Protection, in particular, Article 59 letter k UU SPPA which states "*Special protection for children as referred to in paragraph (1) is given to children victims of network terrorism*". The authors argue that the Panel of Judges did not consider the legal fact that the child joined the terrorism network because it was handed over to the terrorist leader. It was also revealed in court that DG was not willing to join *Amaliyah* activities, but because of the threat to come out of *bai'at*, DG would apostate.

Based on the above, the author argues that DG is a victim of a network of terrorism. DG received the doctrine misrepresented *jihād* continuously after DG lived with Abu Niswah. Therefore, the proper punishment for children is not a prison sentence. This is also in line with the results of the community research report, which recommends that children be sentenced to criminal coaching. Based on Article 71 UU SPPA, the construction sanctions are contained in Paragraph 1 letter b Number 1 UU SPPA about criminals with the condition that the construction outside the institution or Paragraph 1 letter d UU SPPA mentions the structure of the institution.

V. CONCLUSION

Based on the analysis results, the author concluded that case No.08/PID.SUS.Anak/2017/PN.JKT.TIM is as follows. The right to child protection in the criminal act of terrorism based on the fact is that victims of terrorism networks have not been fulfilled. The Public

Prosecutor and the Panel of Judges have ignored the legal fact that children are victims of terrorism networks under Article 59 letter k UU PA and are entitled to special protection under Article 69B UU PA to obtain the education, ideology, nationalism values, the extension of the dangers of terrorism, rehabilitation, and social assistance. In this case, the SPPA is still not fully implemented. It is based that the public prosecutor and the panel of judges never made an attempt at diversion during the examination process at the trial despite the criminal threat imposed on the child based on the demands of only 3 (three) years in prison. In addition, the panel of judges did not consider that the prison sentence was the last resort in this case and a waiver of the recommendations of the results of the community research report which stated that the crime charged was criminal coaching.

REFERENCES

- Aji, Wikan Sinatrio, "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia" (2019) 4:1 JILS (Journal Indones Leg Stud 73–88.
- Arifin, Samsul, "Perlindungan Hukum Terhadap Anak dalam Tindak Pidana Terorisme" (2020) 5:1 J Panor Huk 49–62.
- Candra, Sasmita Adika, Rodliyah Rodliyah & L Parman, "The Best Interest of The Child Principle in The Juvenile Justice System" (2019) 6:4 Int J Multicult Multireligious Underst 490–505.
- Denadin, Sausan Afifah, Andi Najemi & Nys Arfa, "Pendekatan Diversi dalam Sistem Peradilan Pidana Anak (SPPA)" (2021) 2:2 PAMPAS J Crim Law 29–45.
- Desmet, Ellen, Eva Brems & Wouter Vandenhoele, eds, *Children's Rights Law in the Global Human Rights Landscape: Isolation, Inspiration, Integration?* (London: Taylor & Francis, 2017).
- Edi Prastiyo, Wawan & I Ketut Rai Setiabudhi, "Children

- Involvement in Terrorism Activities: Perpetrator or a Victim? (A Study in the Circle of Violence)" (2021) 8:2 PADJADJARAN J Ilmu Huk (Journal Law) 213–231 at 219.
- Hambali, Azwad Rachmat, "Penerapan Diversi terhadap Anak yang Berhadapan dengan Hukum dalam Sistem Peradilan Pidana" (2019) 13:1 J Ilm Kebijakan Huk 15–30.
- Hariyanto, Diah Ratna Sari & Gde Made Swardhana, "Optimalisasi Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak yang Berorientasi Pada Restorative Justice di Kota Denpasar" (2021) 18:3 J Legis Indones 394–404.
- Holzscheiter, Anna, Jonathan Josefsson & Bengt Sandin, "Child rights Governance: An introduction" (2019) 26:3 Childhood 271–288.
- Kilkelly, Ursula, "The UN Convention on the Rights of The Child: Incremental and Transformative Approaches To Legal Implementation" (2019) 23:3 Int J Hum Rights 323–337.
- Kristin, Debby & Chloryne Trie Isana Dewi, "The Rights of Children Refugee in Transit Country Under The CRC, a Case of Indonesia: an Intended Negligence?" (2021) 5:1 Padjadjaran J Int Law 114–136.
- Mahmud Mulyadi, M Ekaputra, Lidya Gultom, Syafrudin Kalo, "Criminal Liability Against Children as Offenders of Narcotics Abuse Based on The Decision of The Tebing Tinggi District Court No. 21/PID.SUS-ANAK/2018/PN.TBT" (2021) 3:1 Res Nullius Law J 55–78.
- Marzuki, Peter Mahmud, *Penelitian Hukum: Edisi Revisi*, 13th ed (Jakarta: KENCANA, 2017).
- Muhaimin, Muhaimin, "Reconstruction of The Juvenile Criminal Justice System and The Giving of Diversion" (2021) 21:2 J Penelit Huk Jure 253–266.
- Nurhayati, Bernadeta Resti, "Constitutional Basis for the Civil Rights of Illegitimate Children" (2017) 1:2 Pattimura Law J 118–130.
- Phillips, Ashley, "How to End the Cycle of Domestic Violence:

Policies Focused on Children” (2021) 9:1 Child Fam Law J 57–76.

Prabasini, Olif Skear, “Legal Protection for Children in Conflict with the Law: Process and Problems” (2021) 3:3 Indones J Int Clin Leg Educ 381–398..

Prameswari, Zendy Wulan Ayu Widhi, “Ratifikasi Konvensi Tentang Hak-Hak Anak dalam Sistem Peraturan Perundang-Undangan di Indonesia” (2017) 32:1 Yuridika 167–188.

Prialianti, Titin, “Legal Protection of The Rights of The Child Conflict with The Law in Criminal System in Indonesia” (2018) 1:3 J Daulat Huk 801–806.

Setyowati, Indah & Ida Musofiana, “Juridical Studies against Diversion in Criminal Justice System” (2020) 6:2 J Pembaharuan Huk 239–253.

Sriwiyanti, Wahyu Saefudin & Siti Aminah, “Restorative Justice for Juvenile Offenders in Indonesia: A Study of Psychological Perspective and Islamic Law” (2021) 2:2 JIL J Islam Law 168–196.

Sumarwoto, Mahmutarrom & Ifrani, “Deradicalisation to Combat Terrorism: Indonesia and Thailand Cases” (2020) 4:2 Sriwij Law Rev 249–260.

Tobing, Rudyanti Dorotea, “Prevention of Child Marriage Age in the Perspective of Human Rights” (2018) 2:1 Sriwij Law Rev 1–17.

Yanto, Oksidelfa et al, “Legal Protection of the Rights of the Child Victims in Indonesian Juvenile Criminal Justice System” (2020) 23:01 J Yustika Media Huk dan Keadilan 24–35.