

Analysis of the Judge's Forgiveness in View of the Lightness of the Actions Committed by the Child

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Abstract

Article 70 of Law Number 11 Year 2012 regulates the forgiveness of judges, but in the Explanation section, there is no more detailed provisions regarding the explanation of the article, especially on the meaning of the article. More detailed provisions regarding the explanation of the article, especially on the meaning of "the severity of the act", thus creating legal uncertainty. The method in this writing is normative legal research with a statutory approach and Conceptual Approach. The purpose of the research is to understand and analyze what is meant by the severity of the act as the basis for the judge's consideration in giving an excuse decision. The results showed that by considering the criminal punishment against child offenders, then Article 70 of the SPPA Law, especially the phrase "the lightness of the act", can be interpreted as a minor criminal offense.

Keywords: *Children, Seriousness, Criminal Offenses*

A. INTRODUCTION

1. Background

Children as creatures of God Almighty have the same basic rights as other human beings. Therefore, the realization and protection of children's human rights must be guaranteed and properly regulated by applicable laws and regulations. The importance of protecting children's human rights is unquestionable, but it is clear that children are the tomorrow of a country, the next generation that will realize their dreams, and children have the right to grow, develop, and live under protection from inhumane punishment and abuse.¹ Law Number 11 of 2012 concerning the Juvenile Justice System (SPPA Law) defines the role of children. In other words, children are the younger generation who inherit the ideals of the nation's struggle and need guidance and protection. In order to ensure the increase and overall intellectual and social ability, it is important for children, especially Indonesian children as the future bearers of the nation, to have the right to

¹ Legal Protection et al., "Legal Protection of Children as Victims of Crime in the Perspective of Positive Law in Indonesia By: Purwanto 1" 6, no. 1 (2020): 77–95.

develop their creativity as the next generation of the Indonesian nation.²

Such as juridical protection for children facing the law (ABH). According to Lilik Mulyadi, in terms of law, minors, and in a positive legal perspective are often referred to as children under supervision.³ Article 1 number 3 of the SPPA Law states that "ABH, hereinafter referred to as a child, is a person who is 12 years old, but has not yet reached the age of 18 and is suspected of committing a criminal act". Children are not fully able to fully account for their actions. Therefore, with regard to the child and his situation and legal treatment, it is mandatory for the child to be given a special special treatment, namely a special court that deals with children's cases.

The juvenile justice system (SPPA), by definition, is different from the adult justice system in general. It should be noted that the use of the term "juvenile justice system" includes elements of "criminal justice system" and "juvenile justice system". The SPPA must contain the word "child". This aims to distinguish the juvenile criminal justice system from the adult criminal justice system and the SPPA. The purpose of the SPPA Law is to make child protection effective in the justice system in order to realize an integrated criminal justice system.

However, the presence of the SPPA Law does not only provide criminal sanctions against laws violated by children, but also puts forward the idea that punishment is a way to receive punishment for safety and create safety for children. The SPPA Law regulates the protection of children who commit criminal acts by law, starting from the process of investigation, investigation, prosecution, trial to the counseling stage. The rights of children who commit crimes are still protected, this is actually stated in Article 2 of the Child Protection Law Number 23 of 2002, with the practice of child protection in line with the basic principles of Pancasila and the 1945 Constitution determined that it is based on the Convention on the Rights of the Child which contains the prohibition of discrimination, child welfare, the right to life, survival and growth, and respect for children's opinions.

Even if a child is proven to have committed a crime and committed a crime, the child still has the right to legal protection and prudence, because regarding his welfare as the successor of the Indonesian state, consideration is needed. The purpose of protecting

² Nevey Varida Ariani, "Implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System," no. 10 (2012).

³ Mulyadi Lilik, *Children's Court in Indonesia: Theory, Practice, and Problems* (Bandung: Mandar Maju, 2005).

children is to ensure the realization of children's right to life, growth, increase and participation in line with human dignity and dignity and be protected from discrimination and violence. Child protection efforts are no longer only a national issue, but ensuring compliance with child protection is a concern of the international community, as reflected in the establishment of the Convention on the Rights of the Child. The existence of this Convention requires States that recognize and ratify this Convention to guarantee the rights of children in each country that ratifies it.

As in the context of Article 2 of the SPPA Law. The SPPA Law is based on thinking that is not only related to *restorative justice*, but also includes judges' forgiveness. Under the SPPA Law, based on Article 70, judges are given the authority to determine the imposition of a humiliation or prosecution, taking into account the mitigation of the action, the personal condition of the child, or the circumstances at the time of the implementation of the action and event, as well as paying attention to justice and humanity. This regulation provides an opportunity for children to avoid crimes and deeds without going through legal procedures to avoid stigmatization.

Judge's forgiveness is a form of forgiveness made by the judge for crimes committed by the guilty, based on a sense of humanity and justice. Considering that deprivation of independence and punishment are considered as the last resort, or "*measure of the last resort*",⁴ it is important that the concept of judges' forgiveness be included in the provisions of the SPPA Law as a basis for realizing the principle of sentencing for children. As a last resort in examining and giving a verdict on crimes committed by children. The previous study that was referenced by this study, namely the first study entitled "The Application of the *Principle of Judicial Pardon (Rechterlijk Pardon)* in the Settlement of Minor Crime Cases as an Effort to Reform the National Criminal Law" by Ika Murianita, in 2023, in an effort to reform national law, she discussed the basic legal considerations for judges in the application of amnesty in resolving minor crimes, and constraints for judges in the focus of deepening their implementation. Judges' forgiveness in minor criminal cases and efforts are made to anticipate obstacles to the application of forgiveness in the settlement of minor criminal cases.⁵ In addition, the study concludes that the panel of

⁴ Anonymous, "Presidential Statement on the Draft Law on the Juvenile Justice System" (Jakarta, 2021), https://berkas.dpr.go.id/armus/file/Lampiran/leg_1-20201027-113543-3412.pdf.

⁵ Mualianita Ika, "The Application of the Principle of Judge's Forgiveness (*Rechterlijk Pardon*) in the Settlement of Misdemeanor Cases as an Effort to Reform the National Criminal Law" (Batanghari Jambi University, 2023).

judges continues to face obstacles in making decisions in cases involving the value of legal pardons. Therefore, the research made by the author in this journal contains the latest information and can be used by judges as a reference in making lenient decisions.

Background Article 70 of the SPPA Law contains philosophical values to realize a just and civilized humanity that recognizes equality and upholds the values of justice and humanity. This is in line with the provisions of Article 70 of the SPPA Law which allows judges to consider the seriousness of the child's behavior, the child's situation when committing his or her actions, as well as humanity and justice for the child. Therefore, if we focus on one of the rights that ABH has and must fulfill, namely "not to be detained, arrested, or imprisoned unless it is used as a step for a short period of time", so that the existence of article 70 of the SPPA Law which gives judges the right to consider the pardon of children for minor acts, clearly contains the value of justice. If the judge's forgiveness is desired as a last resort to realize the child's right to punishment, then it is natural that the judge's forgiveness will provide the best for the child by achieving justice based on humanitarian considerations. However, if you look closely, the explanation of Article 70 of the SPPA Law only mentions the word "quite clearly". The lack of further explanation regarding article 70 of the SPPA Law can be an obstacle for judges in resolving children's cases, therefore this article needs to be considered.

The rules related to judges' forgiveness have not been explained clearly and in detail in the current SPPA Law and the Criminal Code. Basically, the judge's forgiveness is not explicitly described in the SPPA Law itself, thus raising many questions about the clarity of the judge's forgiveness as the basis for judges in making decisions, especially decision-making related to crimes by children. What criteria are used in determining that an act falls into the lightness of the act, so that the judge determines that the child offender clearly committed the act in accordance with the act charged against him, but then for the sake of justice and humanity, the punishment will not be imposed by the judge, sanction or other action.⁶ Does this refer to a crime without malicious intent, or a crime that is not very serious, or a crime of a smaller scale? The interpretation of "lightness of deeds" depends on legal and social circumstances. For example, what is considered "lightness of deeds" in one society may not be the same as what is considered "lightness of deeds" in

⁶ Yustia Ridha Hidayat, "*Juridical Analysis of the Concept of Judge's Forgiveness (Rechterlijk Pardon) in the Case of Children Committing Theft in Aggravating Circumstances* (Case Study of Decision Number 59/Pid.Sus-Anak/2021/PN Tjk)" (University of Lampung, Bandar Lampung, 2023).

another. Therefore, the discussion of judges' forgiveness in Article 70 of the SPPA Law is of interest to the author to be thorough, especially the importance of clarity regarding the "lightness of the act".

2. Problem Formulation

Based on the description above, the problem of what indicators of an act can be interpreted as "lightness of acts" in article 70 of the SPPA Law as the basis for judges' forgiveness is formulated?

3. Research Methods

The research method used is normative law, studying the laws that apply in society and enforcing the norms that are the guidelines for everyone's behavior. This approach considers theoretical approaches, concepts and legal regulations related to research. In writing this journal, the author uses primary data sources, namely the laws and regulations that are currently in force, secondary data sources, namely several books and research results related to the research.

B. DISCUSSION

1. Judge's Forgiveness

It is undeniable that the purpose of criminalization and the mechanism of the criminal justice system is to reduce the crime rate. The pardon of judges in the Criminal Code, in addition to considering the circumstances of the criminal burden, is also based on philosophical ideas or basic ideas to avoid rigidity and absolutism in the criminal system run by law enforcement officials is impossible. Prison is considered the only remedy for inmates. This is a form of legal correction to the principle of legality that is not in line with the application or consolidation of the values and paradigm of Pancasila.⁷

Judging from the terminology, "*indemnity/ forgiveness/ mercy/ pardon/ amnesty*" does not have a clear meaning, and can be interpreted as allowing acts that violate the validity of the law based on social justice. When a person's actions are forgiven, then he feels free from the burden of his mistakes. Forgiveness is not just an outward act; However, it must be accompanied by a commitment to accept the act of forgiveness. Therefore, the use of judges' forgiveness in the criminal justice system means that the law must still be obeyed, but in certain circumstances forgiveness is given and there is no need

⁷ Aristo Evandy A. Barlian and Barda Nawawi Arief, "Formulation of the Idea of Judges' Pardon (Rechterlijk Pardon) in the Reform of the Penal System in Indonesia," *Law Reform* 13, no. 1 (2017): 28, <https://doi.org/10.14710/lr.v13i1.15949>.

for punishment. Judges' pardons are also in line with one of the principles in the development of global criminal law: the principle of materiality. This principle states that even if an act meets the elements of a criminal act, it is not a problem if the act does not have essential elements. This type of crime cannot be classified as a crime. This means that the judge can give forgiveness to the perpetrator of a crime who is proven to have committed a criminal act, if the act is not serious enough to be punished. Furthermore, in issuing a verdict of forgiveness, there are 4 considerations, namely:

- (1) leniency of deeds;
- (2) the personal condition of the maker;
- (3) the circumstances of the act or events that occurred afterwards;
- (4) consideration of justice and humanitarian aspects.

These 4 points are not cumulative in nature, but rather a choice. This is in accordance with the content of Article 70 of the SPPA Law. However, the new Criminal Code does not provide a clear restriction on the meaning of "lightness of deeds". In fact, this ambiguity is a form of weak regulation of judges' forgiveness and is contrary to the principle of legal certainty. However, Barda Nawawi Arif has a different opinion. He argued that the purpose of not being specifically regulated regarding the meaning of "lightness of acts" is not to limit the authority of judges in issuing forgiveness decisions only for certain criminal acts.

Judges are state judicial officials who are legally authorized to administer justice. Meanwhile, jurisprudence is a series of acts in which judges accept, consider, and decide cases in court without discrimination, according to the procedures prescribed by law, and based on the principles of freedom, honesty, and justice. As emphasized in the text of Article 142 RbG, the judge is not proactive in filing a lawsuit, but rather waiting for the justice seeker to file his lawsuit. Similarly, judges cannot litigate in criminal cases, they only wait for a case to be filed by a police investigator or public prosecutor (in this case a certain matter). The passive nature of judges here is not an excuse or an obstacle in their efforts to explore, follow, understand, and deepen the legal values and sense of justice that live in society.⁸

⁸ Margono, United States *The Principle of Usefulness & Legal Certainty in Judges' Decisions* (Jakarta: Sinar Grafika, 2021).

In legal terminology, authority is the ability given by legal regulations to do an action that has legal consequences.⁹ This view conveys the understanding that each authority must always act within the limits set, or at least determined, by positive law. Regarding the rule of law, the power must be limited to or in accordance with written or non-written law, and the mention of written law as the "general principle of good governance" in the field of Indonesian government law. In essence, the judge is in charge of deciding the case submitted to him. The role of jurisdiction can be seen in two ways, namely law enforcement to achieve justice and the provision of justice as an expected result of law enforcement. The term "law" must have a broad meaning, not only encompassing the boundaries of the law (positive law), but also all social norms and laws as a whole. The requirements for judges are a consequence of the law and professionalism of judges who exercise judicial power to protect justice, truth, and law in Indonesia through judicial institutions. Talking about the authority of judges is closely related to the granting of judicial power. It is stated in Article 24 paragraph (1) of the 1945 Constitution that "judicial power is an independent authority in the administration of justice in the context of maintaining law and justice" which stipulates that judges may not override the basic law of its implementation. The Interests of Law Enforcement Law enforcement and judicial institutions can carry out justice independently and independently without the participation of outside parties.

However, the freedom in question must be defined that although the judge can act freely in the case he handles, the judge still has an attachment to the existing legal rules to achieve justice. The existence of judicial power is strengthened in Article (1) of Law Number 48 of 2009 concerning Judicial Power which is assigned to administer and guarantee justice based on the 1945 Constitution and Pancasila justice. In addition, the judge's decision does not necessarily lead to punishment, because it depends on the mental and psychological instability of the child, and there is a high probability of a criminal act. If the conditions of a valid pardon have been met, then the judge can impose a verdict with a valid pardon (guilty but not punished).

2. Measure the Lightness of Deeds Based on the Judge's Forgiveness

Acts committed by children are considered misdemeanors. In this first element, the leniency in this law actually refers to minor crimes and that the return of the provisions

⁹ Indroharto, *Efforts to Understand the State Administrative Court* (Jakarta: Pustaka Sinar Harapan, 2002).

of the criminal principle against children is necessary if it is a last resort. Solutions or commitments to solutions that prioritize the best interests of the child, both through diversion solutions and through forgiveness from judges. In the legal context, the ease of an act can be used as an indication of the seriousness or seriousness of the act carried out by a person. The severity of the offense is usually taken into account when determining penalties and sanctions. For example, in a trial, the judge may consider the seriousness of the defendant's actions as a mitigating factor.

According to the KKBI, "light" does not mean heavy, and "action" means done. The sense of justice and legal certainty cannot be measured or ensured because there are no guidelines or standards to calculate the fair criminal burden in imposing criminal sanctions, especially prison sentences, in criminal trials in Indonesia. There are only minimum or maximum limits on the imposition of jail sentences and fines. However, this is still far from the hope of justice and certainty. The range of minimum and maximum scores is still very wide, the judges' opinions may differ, and the details are not complete.

In fact, the new Criminal Code does not provide a clear limit on the severity of a crime. The new Criminal Code only defines the severity of violations subject to fines according to Article 82 Paragraph (3) and groups them into five categories. There is no provision in the new Criminal Code that clearly divides light offenses and heavy offenses. However, Barda Nawawi Arif said, in the new criminal law operational pattern, there are still qualifications for the weight of the offense such as very light, heavy, very heavy crimes. The work pattern related to the classification of delinquency weights in the new Criminal Code can be formulated as follows:

- (1) very light offenses, threatened with small fines (Category I or II). Sentenced to imprisonment for less than 1 decade or a small fine, or a new offense for which in its assessment is threatened with imprisonment for less than 1 year;
- (2) serious offenses, applicable to serious crimes for which the threat is imprisonment for more than 1-7 years, with alternative penalties of fines categories III and IV;
- (3) Very severe offense, an offense that threatens imprisonment for more than 7 years, the heaviest penalty (death penalty or life imprisonment).

The pattern is related to the severity of the crime qualification. Even though it has

only been divided into three weights, is the expression of the lightness of the criminal act in Article 54 Paragraph (2) based on the classification of the type of offense? There is no provision that expressly states that the leniency of a crime is determined by the amount of weight qualification value. However, questions still arise when considering the weight of the delicacies qualifying. "Is the qualification for a minor crime the same qualification as the classification of a very light offense?". If the type of crime whose extenuation is based on the classification of "very light offense", then there is still a problem. This problem is because in the Criminal Code there is no firmness regarding what kind of criteria, so that an act is classified as a minor offense.

Due to its low-level nature or threat, this examination is also carried out as part of a special event called a misdemeanor examination event, which aims to investigate the case through the simplicity of the procedure. M. Yahya Harahap's view, a study of trials, appeals, verdicts, verdicts, and others states that minor offenses are a type of crime that can be classified in the special event.¹⁰ Although Law Number 8 of 1981 concerning the Criminal Procedure Law (KUHP) does not explain the crimes included in the examination of minor cases, the Criminal Procedure Code still provides indicators in terms of "criminal threats". Article 205 paragraph (1) of the Criminal Procedure Code, it is said that "what is examined according to the examination of minor crimes is a case that is threatened with imprisonment or imprisonment for a maximum of 3 months and/or a maximum fine of Rp7,500,- and minor insults except as specified in Paragraph 2 of this Part. It is also stated that *the Tipiring regulation* in Articles 364, 373, 379, 384, 407 and 482 of the Criminal Code is threatened with a maximum prison sentence of 3 months or a fine of 10,000 times the fine".¹¹ In the Criminal Code, there are examination procedures: ordinary; brief; and fast. Furthermore, the Supreme Court Decision Number 2 of 2012 concerning the Adjustment of Limits and Fines for Violations Based on the Criminal Code was issued. If the subject matter of the case "does not exceed Rp 2.5 million", then the criminal act can be classified as a "misdemeanor". The explanation of Article 9 Paragraph 2 letter b of the SPPA Law states that "minor crimes" are a threat of imprisonment or a maximum sentence of 3 months.

The application of judges' forgiveness is actually an effort to prevent children from

¹⁰ Harhap Yahya, *Discussion of Problems and Application of the Criminal Code* (Jakarta: Sinar Grafika, 2009).

¹¹ Hasanah Sovia, "Misdemeanor Offenses (Tipiring)," 2017, Misdemeanor Offenses (Tipiring).

being handled in this system and prevent criminalization of children that have a negative impact on them. However, until now the author has only found 1 case that really applies the judge's forgiveness, namely case Number 2/Pid.Sus-Anak/2021/PN Rgt¹² In consideration of the verdict, it is stated that the first condition for the application of *Rechtelijk Pardon* is the lightness of the act committed by the perpetrator's son. In the Explanation of Article 70 of the SPPA Law, the Judge did not find the criteria for an act that can be said to be light. So that the reference for an act becomes light, whether to use the basis of the Criminal Code by directly mentioning in the qualification of elements such as Article 364 of the Criminal Code or referring to the seriousness of criminal acts such as terrorism is still unclear to judges. Regarding this problem, the judge seeks a solution through a systematic interpretation method, namely by linking to the explanation of Article 9 paragraph (1) of the SPPA Law which qualifies child criminal acts in relation to whether or not they can be diversioned in two types of crimes, ordinary crimes and serious crimes such as terrorism, rape, drug trafficking, and murder. From the examples in the explanation of the article, the judge considers that the crime committed by the perpetrator's child is not a serious criminal act. Therefore, against these conditions by looking at the acts committed by the perpetrator's son, namely Article 363 paragraph (1) 3 of the Criminal Code, it is a light act.

There is no clear agreement on the severity of the delicacies described or the "lightness of the deeds". Indonesia's new Criminal Code does not specifically provide for the threat of maximum imprisonment when granting forgiveness to perpetrators of criminal acts is considered. However, this provision can be interpreted similarly to the requirement of "lightness of deeds" for forgiveness. One of the characteristics of the assessment of the mitigation of an act is that by considering the criminal threat caused by the criminal act in question and based on the above decision, it can be concluded that the definition of a minor offense can be interpreted by the judge in such a way that legal pardon can be obtained.

C. CONCLUSION

Judge's forgiveness is an important element in handling problems that should not contain elements of "punishment" in children's cases. Therefore, the "lightness of the act" in article 70 of the SPPA Law is one of the judges' considerations in giving light

¹² Decision of PN RENGAT Number 2/Pid.Sus-Anak/2021/PN Rgt (2021).

punishment to children. From the results of the research, the author refers to Yahya Harahap's views on minor crimes. Because currently there is no formal regulation that explains the criteria for a criminal act that has been committed can be called light, the author concludes that the crime can be recognized as light by considering the criminal threat posed by the criminal act from the consideration of the verdict can be interpreted that the definition of a minor crime can be interpreted by the judge so that the application of the judge's dismissal can be carried out. The author thinks that further material in the explanation is needed in the judge's forgiveness article. The reason is that currently there is no formal provision regarding the lightness of the act in the case that allows the judge to make a decision to forgive. Without formal provisions, the pardon of judges in the SPPA Law is believed to cause ambiguity in legal norms that lead to ensuring legal security for children. Legal products must be able to provide legal certainty to the community. This is in accordance with Lon Fuller's description of legal principles, from which he identified eight principles that define that certainty between regulations and legal practice is necessary so that positive law can be enforced if it falls into the realm of actions and factors that can affect the course of law.¹³

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¹³ Anonymous, "BAB II," n.d.

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