

Legal Protection of Children Involved in Crime of Terrorism

by Prananta Garcia Ginting

Submission date: 03-Aug-2024 08:26AM (UTC+0700)

Submission ID: 2426488399

File name: IJLCJ_VOL_1_NO._3_SEPTEMBER_2024_HAL_201-210.pdf (913.04K)

Word count: 4148

Character count: 22217



Legal Protection of Children Involved in Crime of Terrorism

Prananta Garcia Ginting¹, Yasmirah Mandasari Saragih², Mhd. Azhali Siregar³

Ongku Sapna Fella Hasibuan⁴, Daniel Edward H Situmorang⁵

¹⁻⁵ Master of Law Study Program, Panca Budi Development University, Medan, Indonesia

Email : pranantagarcia@gmail.com¹, yasmirahmandasari@gmail.com²,
azhalisiregar@dosen.pancabudi.ac.id³, sapnahasibuan17@gmail.com⁴, danieledwardhs12@gmail.com⁵

Author correspondence: pranantagarcia@gmail.com*

ABSTRACT. Terrorism is a crime related to humanity accompanied by serious threats that have an impact on the integrity and sovereignty of a country. In Indonesia itself, criminal acts of terrorism are a serious problem. Because in their implementation they not only involve adults but also involve children who do not know or understand anything about terrorism. Children as victims of criminal acts of terrorism really need legal protection so that these children can get their rights back. The research method used in this paper uses normative legal research methods. Meanwhile, the technique for collecting legal materials is carried out by conducting a literature study of secondary legal materials. Then, based on legal theories, it is analyzed qualitatively to obtain conclusions from the problem formulations that have been determined. This research aims to find out the process of handling children involved in criminal acts of terrorism and to find out what form of legal protection is given to children involved in criminal acts of terrorism. The results of this research indicate that the process of handling children involved in criminal acts of terrorism is carried out by implementing the Juvenile Criminal Justice System with the concept restorative justice and children will receive protection from violence and discrimination, namely guaranteeing the protection of children's rights to live, grow, develop and participate optimally in accordance with human dignity.

Keywords: Legal Protection, Children, Crime, Terrorism.

1. INTRODUCTION

Background

Etymologically in the Indonesian dictionary, the word terrorism comes from the word terror, which means an attempt to create fear, horror and cruelty by a person or group. Meanwhile, the definition of Terrorism based on Article 1 paragraph (2) of Law of the Republic of Indonesia Number 5 of 2018 concerning the Criminal Act of Terrorism is an act that uses violence or threats of violence that creates an atmosphere of terror or widespread fear that can cause mass victims, and/or causing damage or destruction to vital strategic objects, the environment, public facilities, or international facilities with ideological, political or security disturbance motives.

We need to know that criminal acts of terrorism are regulated in Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law of the Republic of Indonesia Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism.

Meanwhile, crimes against humanity, especially serious violations of Human Rights (HAM), are regulated in Law of the Republic of Indonesia Number 26 of 2000 concerning Human Rights Courts (HAM). Apart from that, Article 28 B of the 1945 Constitution of the

¹² Republic of Indonesia (UUD 1945) clearly states ²¹ that the state guarantees that every child has the right to survive, grow and develop and has the right to protection from violence and discrimination.⁶ (Purba & Yusa, 2020) because children are part of the young generation who will later become the nation's successors and warriors. (Kahesti, 2018)

As time goes by, these acts of terrorism also develop. The perpetrators of this terrorism carried out violence by exploiting the sophistication of modern technology (Wakhid al-Adziem, 2003). In fact, with the sophistication of modern technology, it makes it very easy for them to achieve their goal of creating a network of terror acts via social media. And if you look closely, terrorism itself has characteristics, namely:

- a. Criminal acts of terrorism are political or non-political in nature;
- b. Create a sense of insecurity which can cause psychological disorders in society;
- c. His actions always seem cruel, sadistic and do not respect human values;
- d. The aim is to intimidate or influence state government policy;
- e. Make organized plans to create chaos within and between countries;
- f. Usually to attract public attention; And
- g. The targets of acts of terrorism are civilians who are in crowded places. For example: super markets, malls, schools, places of worship, hospitals and other public facilities.

Children are social creatures and creatures of Almighty God from the womb until they are born and have the right to life and independence and receive good protection from parents, family, society, nation and state. (Abdussalam & Adri Deasasfuryanto, 2014) According to one expert, Yasmirah, what is meant by Children are part of the young generation as one of the human resources who are the potential and successors of the ideals of the nation's struggle who have a strategic role and have special characteristics and characteristics that require complete physical, mental and social guidance and protection (Saragih & Rikson, 2023). However, in acts of terrorism, the perpetrators also often involve children in a crime, especially in acts of terrorism. The involvement of children in a criminal act certainly attracts a lot of criticism, condemnation or opposition because children are the nation's next generation who are prepared to be in control of the country's future. So actually Children who are involved as perpetrators of terrorism are victims of recruitment who are easily brainwashed and subjected to the doctrine of jihad. Seeing a critical situation like this, it is very possible ⁷ to provide protection for children who are victims of terrorists. Child protection activities are also legal actions that have consequences law (Nusantara, 1986). Laws are rules that determine actions that may not be carried out accompanied by threats in

the form of punishment (nestapa) and determine the conditions for the punishment that can be imposed(Siregar & Rahul, 2023). For this reason, there is a need for legal guarantees for child protection activities. And protection of children is also defined as protecting the potential of human resources with the aim of developing Indonesian people as a whole towards a just and prosperous society based on the ideals of the nation which is guided by Pancasila and the 1945 Constitution of the Republic of Indonesia.

Based on the description above, the author feels very interested in studying it in more depth through a legal journal paper entitled“Legal Protection for Children Involved in Terrorism Crimes”.

Formulation of the problem

From the background description above, the problem formulation that will be studied in this paper is:

1. What is the process for handling children involved in criminal acts of terrorism?
2. What form of legal protection is provided to children involved in criminal acts of terrorism?

2. RESEARCH METHODS

The research method used is a normative legal research method, namely normative legal research by conducting a literature study (Soekanto and Sri Mamudji, 2009).The data source used in this research is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. This research is descriptive analytical in nature which is used to find answers to the problem formulations raised, namely providing a specific description based on data collected systematically. This method begins with compiling the data that has been collected and then used as reference material to explain and analyze descriptions of existing problems (Ibrahim, 2012).

3. DISCUSSION

Process for Handling Children Involved in Terrorism Crimes

In this modern era, there are many cases of terrorism involving children to carry out their actions. For this reason, treatment of children who commit criminal acts, arrest and detention of children must be in accordance with the law. There are several regulations that regulate the legal protection of children, including:

- a. Law of the Republic of Indonesiaa Number 5 of 2018 concerning Amendments to Law of the Republic of Indonesia Number 15 of 2003 concerning Stipulation of

Government Regulations in Lieu of Law of the Republic of Indonesia Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism;

- b. Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection;
- c. Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System; And
- d. Law of the Republic of Indonesia Number 39 of 1999 concerning Human

Rights.

According to TP Thornton in his book "Terror as a Weapon of Political Agitation" ¹⁹ "What is meant by terrorism is a symbolic act designed to influence political policy and behavior by extra strict means, especially by using violence and threats of violence (Thornton, 2006). Meanwhile, the definition of terrorism according to James Adams is the use or threat of physical violence by individuals or groups for political purposes, either for the benefit of or against existing powers to paralyze or intimidate a larger target group. The aim is to overthrow certain regimes and to undermine the existing international political order (Adams, 1997).

In fact, the Juvenile Criminal Justice System Law (UU SPPA) does not yet regulate the handling of children involved in criminal acts of terrorism. But children are still children whose rights must be protected and fulfilled. Because in fact the child is just a victim who is used as a tool to help the perpetrators in carrying out their goals. Article 5 of the SPPA Law states that:

- 1) Must prioritize restorative justice, where ⁷ all parties involved in a particular crime work together to overcome problems and create an obligation to make things better by involving victims, children and the community in finding solutions to repair and reassure those who are not based on retribution. Because restorative justice is an alternative resolution of criminal cases which in the criminal justice procedure mechanism focuses ⁶ on punishment which is transformed into a dialogue and mediation process involving the perpetrator, victim, family of the perpetrator/victim and other related parties to jointly create an agreement on resolving the case. punishment that is fair and balanced for both the victim and the perpetrator by prioritizing restoration to its original state and restoring patterns of good relations in society (Saragih & Muhammad Ridwan Lubis, 2022).

- 2) The SPPA in question concerns:
 - a. criminal investigation and prosecution of children in accordance with the law unless otherwise specified;
 - b. Conducted trials in the general judicial area; And
 - c. guidance, mentoring, supervision and/or assistance during the process of carrying out a crime or action and after undergoing it.
- 3) What is meant by paragraph (2) letters a and b is that diversion must be carried out.

Article 6 of the SPPA Law states that the aim of Diversion is to reconcile the victim and the child by carrying out a resolution without a judicial process that protects the child's freedom from being taken away and strengthens a sense of responsibility towards the child through community participation. In other words, this law supports that children who are in conflict with the law do not need to take part in criminal proceedings to avoid the negative effects that arise from the judicial process on the child.

This transition in Diversion is related to a transition from a judicial process to the community as service assistance in the court process and outside the court process. The aim of implementing the juvenile criminal justice system is not merely to impose criminal sanctions on children who commit criminal acts but rather to focus on the responsibility of the perpetrators towards the victims of criminal acts for the sake of the child's future and the welfare of the child without reducing the interests of the community for the common good (Saragih & Widimartha Nainggolan, 2023)

Seeing the increasing number of children becoming victims of terrorism, the government issued Law of the Republic of Indonesia Number 23 of 2002 which was changed to Law of the Republic of Indonesia Number 35 of 2014 as the legal basis for child protection. The special provisions for children involved in terrorism are Articles 59, 59A, 64 and 69B of the Child Protection Law. And the provisions that mention children as victims of terrorist networks are regulated in Article 59 paragraph (2) letter which states that special protection for children victims of terrorist networks can be carried out by providing education (education, ideology and nationalist values), conducting counseling regarding the dangers of terrorism, carrying out rehabilitation social and social assistance.

What is a factor in a child becoming involved in an act of terrorism according to Ministerial Regulation (PERMEN) for Women's Empowerment and Child Protection (PPPA) concerning Guidelines for Protecting Children from Radicalism and Law of the Republic of Indonesia Number 7 of 2019 concerning Criminal Acts of Terrorism, including:

- a. Internal factors, namely weak faith or knowledge about religion, national insight, gender, age, intelligence and the child's level of emotional maturity; And
- b. External factors, namely the family, especially parents, who influence children to get involved in terrorism networks, the environment, especially the child's friends, who invite children to get involved in terrorism networks, internet media, especially media which presents radicalism sites on how to carry out appropriate actions. leads to terrorism, poverty which. Children are promised that they will receive large profits or rewards if they want to join the terrorist network, especially teachers who deliberately provide radical teachings or understanding that lead to acts of terrorism.

²³ The process of handling children as perpetrators of criminal acts of terrorism refers to the Juvenile Criminal Justice System (SPPA) which has similarities to general criminal justice, namely:

- 1) Carrying out inquiries and investigations ¹ in accordance with the provisions contained in Article 26 of the SPPA Law, namely that investigations into children's cases are carried out by investigators based on the Decree of the Chief of Police or other appointed official and examinations of child victims or child witnesses are carried out by investigators;
- 2) Carry out arrests and detentions based on the provisions contained in Articles 30 to 40 of the SPPA Law. Where arrests prioritize the principle of presumption of innocence in order to respect and uphold the dignity of children. Even when detained, the child must receive social, spiritual and physical needs. Children's safety must also be maintained in accordance with Article 32 of the SPPA Law;
- 3) Carrying out an inspection ⁹ based on Article 35 of the SPPA Law. Based on the judge's orders, the defendant is detained for a maximum of 10 (ten) days and will be extended if there is permission from the Head of the District Court for a maximum of 15 (fifteen) days. If the extension period ends while the Judge has not yet given a ⁹ decision, the child must be expelled by law; And
- 4) Carrying out prosecutions based on Article 41 and Article 42 of the SPPA Law. Article 42 states that the prosecutor must ¹⁴ carry out diversion no later than 7 (seven) days after receiving the case file from the investigator with a maximum period of 30 (three) days. If the diversion is successful, the prosecutor is obliged to submit the diversion BA to the District Court Chair for determination. And if the implementation of Diversion fails, the prosecutor is obliged to submit a Diversion BA and submit the

case to court with the results of the social research attached. According to Article 43 paragraph (1) and paragraph (2) of the SPPA Law, court hearings in children's cases are conducted by a judge appointed by a decision of the Chief Justice of the Supreme Court or another official who appointed on the recommendation of the Chairman of the PN through the Chairman of the PT. It should be noted that a person can be appointed as a judge if he or she has experience as a judge in a general court environment, has interest, attention, dedication, understands children's problems and has attended technical training on juvenile justice.

Forms of Legal Protection Provided to Children Involved in Terrorism Crimes

Child protection activities are a legal action that has legal consequences (Abdul G. Nusantara, 1986). A child cannot protect himself from various mental, physical and social threats in life. The most basic psychological need in human life is affection. Because the government feels responsible for protecting children, legal regulations have been formed which aim to protect children who come into contact with the law. Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection emphasizes that the organizers of child protection are parents, family, government and the state, the first burden in implementing child protection falls on parents. However, the fact is that most parents are busy with work so their children are neglected (Muhammad Fachri Said, 2018).

National instruments that are closely related to child protection are:

- a. Convention on the Rights of the Child. Human beings under 18 (eighteen) years of age, unless based on the law applicable to such children it is determined that the age of majority has been reached earlier;
- b. Article 1 Number 1 Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights. A child is every human being under the age of 18 (eighteen) years and is not married. Including children who are still in the womb if it is in their interests;
- c. Article 1 Number 3 Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. A child in conflict with the law is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a criminal act;
- d. Article 1 Number 4 Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. Child victims are children who are victims of criminal acts who are not yet 18 (eighteen) years old who experience physical, mental suffering and/or economic losses caused by criminal acts;

- e. Article 1 Number 5² Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. A child witness is a child who is a witness to a criminal act who is not yet 18 (eighteen) years of age who can provide information for the purposes of investigation, prosecution and examination at a court hearing regarding a criminal case that he or she has heard, seen and/or personally experienced.¹⁷ Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection emphasizes that the government and other state institutions are obliged and responsible for children involved in criminal acts of terrorism. Provide special protection by:
- 1) Providing education about education, ideology and nationalist values;
 - 2) Conduct counseling about the dangers of terrorism;
 - 3) Conduct counseling about religion to help provide an understanding of faith and devotion to God Almighty so that the child can fortify himself and be able to overcome the problems he faces;
 - 4) Conducting personality counseling so that the child is able to control himself to express his interests and talents in a positive way;
 - 5) Conduct counseling about social life to encourage the child to live well in society;
 - 6) Conduct counseling about the family. So that children do not view their family as enemies who do not agree with them and so do not need to be obeyed, obeyed and respected;
 - 7) Carrying out social rehabilitation at the Social Welfare Organization (LPKS) and Social Rehabilitation for Child Victims and Child Witnesses at the Social Welfare Institution for Children in Conflict with the Law (LKSABH); And
 - 8) Provide assistance to child victims, child witnesses and child perpetrators from the time of investigation, prosecution and until the examination in court.²⁰ Minister of Women's Empowerment and Child Protection Regulation Number 7 of 2019 has guidelines for protecting children from radicalism and criminal acts of terrorism which carry the following criminal threats:
- 1) Half of the maximum threat of imprisonment for adults. Found in Article 81²³ paragraph (2) of the Juvenile Criminal Justice System Law);
 - 2) The maximum prison sentence is 10 (ten) years and there is no death penalty for children. It is contained in Article 3 letter f and Article 81 paragraph (6) of the⁶ Juvenile Criminal Justice System Law.

Article 19 of Law of the Republic of Indonesia Number 15 of 2003 concerning Terrorism Crimes also regulates the imposition of life imprisonment or the death penalty which does not apply to perpetrators under 18 (eighteen) years of age.

4. CONCLUSION

From the descriptions of the results of the discussion of the problem formulation above, the author draws the following conclusions:

- 1) The process of handling children involved in criminal acts of terrorism, namely carry out inquiries and investigations in accordance with the provisions contained in Article 26 of the SPPA Law, carry out arrests and detentions based on the provisions contained in Articles 30 to Article 40 of the SPPA Law, conduct examinations based on Article 35 of the SPPA Law and carry out prosecutions based on Article 41 and Article 42 of the SPPA Law.
- 2) The form of legal protection provided to children involved in criminal acts of terrorism is providing education about education, ideology and nationalist values, providing counseling, carrying out social rehabilitation at Social Welfare Organizing Institutions (LPKS) and Social Rehabilitation for Child Victims and Child Witnesses. Social Welfare of Children in Conflict with the Law (LKSABH) as well as providing assistance to child victims, child witnesses and child perpetrators from the time of the investigation process, prosecution and until the examination in court.

BIBLIOGRAPHY

- Abdussalam, H. R., & Deasafuryanto, A. (2014). Child Protection Law. PTIK.
- Adams, J. (1997). Terrorism Groups in Legal Politics International. Indonesian Legal Aid Foundation.
- al-Adziem, A. W. (2023). Terrorism in International Law Perspective. Faculty of Sharia UIN SUKA.
- Ibrahim, J. (2012). Normative Legal Research Theory and Methodology (Cet. 6). Bayumedia Publishing.
- Kahesti, Y. Z. (2018). Fulfillment of children's rights in the education sector in institutions Class IIA Correctional Center in Balikpapan City. Udayana Master of Law Journal, 7(3).
- Law of the Republic of Indonesia Number 11 of 2012 concerning the Judicial System Child Crime.

- Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.
- Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law.
- Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights.
- Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law of the Republic of Indonesia Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law of the Republic of Indonesia Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism.
- Ministerial Regulation (PERMEN) for Women's Empowerment and Child Protection (PPPA) concerning Guidelines for Protecting Children from Radicalism.
- Nusantara, A. G. (1986). *Law and Children's Rights*. Rajawali.
- Putra, I. G. A. P., & Yusa, I. G. (2020). Legal protection for children of offenders criminal acts of terrorism from a legislative perspective. *Kertha Wicara Journal*, 9(6).
- Said, M. F. (2018). Legal protection of children according to a human rights perspective. *Journal Legal Scholar*, 5(1).
- Saragih, Y. M., & Lubis, M. R. (2022). *Dynamizing Justice Progressive Restorative Justice*. CV. Dewa Publishing.
- Saragih, Y. M., & Nainggolan, W. (2023). Implementation of diversion against children in conflict with the law in the juvenile justice system. *Journal of Social Science Research*, 3(4), 6371-6383. <https://jinnovative.org/index.php/Innovative>.
- Saragih, Y. M., & Rikson. (2023). Legal protection for children as criminal perpetrators. *Journal Of Social Science Research*, 3(4), 6437-6449. <https://jinnovative.org/index.php/Innovative>.
- Siregar, M. A., & Adrian, R. F. et al. (2023). *Tracing the Journey of Birth Concept of Criminal Law System and Criminal Law in Indonesia*. Throne of Media.
- Soekanto, S., & Mamudji, S. (2009). *Normative Legal Research An Overview Short*. Raja Grafindo Persada.
- The 1945 Constitution of the Republic of Indonesia.
- Thornton, T. P. (2006). *Terror As A Weapon Of Political Agitation (1964)*. Pustaka Al-Kautsar.

Legal Protection of Children Involved in Crime of Terrorism

ORIGINALITY REPORT

20%

SIMILARITY INDEX

17%

INTERNET SOURCES

20%

PUBLICATIONS

12%

STUDENT PAPERS

PRIMARY SOURCES

1	ojs.journalsdgd.org Internet Source	1%
2	jurnalhukum.unisla.ac.id Internet Source	1%
3	ejournal.stih-awanglong.ac.id Internet Source	1%
4	Nurul Fatia Kurniasi, Juajir Sumardi, Iin Karita Sakharina. "Elimination of Violence Against Children During the Covid-19 Pandemic based on the United Nations Convention on the Rights of the Child (UNCRC 1989)", Khazanah Hukum, 2022 Publication	1%
5	repository.umy.ac.id Internet Source	1%
6	www.bircu-journal.com Internet Source	1%
7	ejournal.iainpurwokerto.ac.id Internet Source	1%

8	www.grafiati.com Internet Source	1 %
9	"Asian Yearbook of International Law, Volume 10 (2001-2002)", Brill, 2005 Publication	1 %
10	journal.ppatk.go.id Internet Source	1 %
11	ojs.transpublika.com Internet Source	1 %
12	Submitted to Sriwijaya University Student Paper	1 %
13	international.aritekin.or.id Internet Source	1 %
14	www.academia.edu Internet Source	1 %
15	Submitted to Universitas International Batam Student Paper	1 %
16	Suwitno Yutye Imran. "The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments", Jambura Law Review, 2021 Publication	1 %
17	www.jurnal.staialhidayahbogor.ac.id Internet Source	1 %

garuda.ristekbrin.go.id

18	Internet Source	1 %
19	journal.formosapublisher.org Internet Source	1 %
20	Submitted to Monash University Student Paper	1 %
21	Submitted to Universitas Sebelas Maret Student Paper	1 %
22	Wiwit Ariyani, Henny Susilowati. "The Challenges Faced by Community Advisors in Diverting Children who are in Conflict With the Law", KnE Social Sciences, 2021 Publication	1 %
23	ejurnalqarnain.stisnq.ac.id Internet Source	1 %
24	Submitted to Universitas Warmadewa Student Paper	1 %

Exclude quotes On

Exclude bibliography On

Exclude matches < 1%