


## CRIMINAL RESPONSIBILITY FOR PERPETRATORS OF CHILD ASSAULT

(Analysis of Decision Number 2784/Pid.B/2021/PN Mdn)

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### Abstract

This study analyzes the criminal liability of perpetrators of gang violence that resulted in children becoming victims, with a case study of Decision Number 2784/Pid.B/2021/PN Mdn. Using a normative legal research method with a descriptive approach, this study reveals that criminal acts of violence against children occur in the context of gang violence between youths. Analysis of the court decision shows that the defendant was proven to have committed physical violence that caused injury to the child victim. The defendant was found guilty of violating Article 80 Paragraph (1) of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law. RI Number 23 of 2002 concerning Child Protection, and was sentenced to imprisonment. This study recommends the importance of effective law enforcement in cases of violence against children and the need for comprehensive legal protection for victims.

### Keywords:

*Criminal Liability, Ganging Up, Child Abuse*

## Introduction

Pancasila is the foundation of the Unitary State of the Republic of Indonesia (NKRI). In addition, Pancasila is also the source of all state laws.<sup>1</sup> Indonesia is a country that upholds Human Rights (HAM).<sup>2</sup> This has legal consequences that in the Indonesian state, the implementation of state power in a broad sense must and always be based on law, because it is the law that provides legitimacy and also provides limits to the authority of the state (government). In addition, Pancasila and the 1945 Constitution Article 27 paragraph (2) stipulate: "Upholding human rights and guaranteeing all citizens equal standing before the law and government without exception."<sup>3</sup>

Child protection is a fundamental issue in the context of human rights and social development of a nation.<sup>4</sup> Children are the next generation of the nation who have a strategic role and are a national asset whose rights must be protected<sup>5</sup>, including the right to feel safe and free from violence. The Indonesian Constitution through the 1945 Constitution has emphasized that every child has the right to survival, growth, and development and the right to protection from violence and discrimination.

Social reality shows that the level of violence against children is still a serious problem in Indonesia. Various cases of abuse involving children as both victims and perpetrators often occur in various regions, reflecting the complexity of social and legal issues that require comprehensive attention.<sup>6</sup> This phenomenon of violence not only physically and psychologically harms children, but also threatens the future and development of the younger generation.<sup>7</sup>

Decision Number 2784/Pid.B/2021/PN Mdn provides a specific description of a child abuse case in the context of ganging up. This case highlights how children can become victims in violent situations involving adults, raising questions about the criminal responsibility of the perpetrators.<sup>8</sup> The case stems from a violent incident that occurred on July 23, 2021, at around

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<sup>1</sup> Redyanto Sidi, dkk, "*Staatsfundamentalnorm* (Pancasila) Sebagai Bahan Pembaruan Sistem Hukum Di Indonesia", *Iuris Studia: Jurnal Kajian Hukum*, Volume 2, Nomor 3, Oktober 2021, hal. 501.

<sup>2</sup> Redyanto Sidi, *Hak Asasi Manusia Dalam Perfektif Hukum Kesehatan Di Indonesia*, Perdana Publishing, Medan, 2021, hal. 1.

<sup>3</sup> Laurentus Hermanuel Lbn.Gaol dan Redyanto Sidi, "Analisis Normatif terhadap Kedudukan Alat Bukti dalam Tindak Pidana Penganiayaan Ringan", *Innovative: Journal Of Social Science Research*, Volume 3, Nomor 5, Tahun 2023, hal. 78.

<sup>4</sup> Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*, Alumni, Bandung, 2012, hal. 16.

<sup>5</sup> Maidin Gultom, *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Pidana*, Refika Aditama, Bandung, 2010, hal. 25.

<sup>6</sup> Arif Gosita, *Masalah Korban Kejahatan*, Akademika Pressindo, Jakarta, 2014, hal. 45.

<sup>7</sup> Nashriana, *Perlindungan Hukum Pidana bagi Anak di Indonesia*, Rajagrafindo Persada, Jakarta, 2011, hal. 78.

<sup>8</sup> Putusan Pengadilan Negeri Medan Nomor 2784/Pid.B/2021/PN Mdn.

03.00 WIB in the morning. The incident took place on Jalan Brigjen Katamso Gg. Wakaf No. 6, Kampung Baru Village, Medan Maimun District, a location that later became the center of attention in the judicial process. In the context of this specific time and place, a series of actions took place involving the defendant, Fadli Asyzari, and a child named Fauzan Azmi, who was the victim in the incident. The core of this case is the alleged criminal act of violence committed by the defendant against the child victim, an issue that has received serious attention from the justice system considering that child protection is a priority in Indonesian law.

The chronology of the incident, as revealed in the trial, showed that the defendant was involved in a series of physical acts that caused injury to the victim. These actions included beatings and kicks carried out by the defendant against Fauzan Azmi. As a result of these violent acts, the victim suffered abrasions and bruises on several parts of his body. This fact became the basis for the public prosecutor to charge the defendant with articles related to violence against children. However, the complexity of this case does not only lie in the defendant's actions alone. The trial also revealed the involvement of other parties in the incident. Information that emerged in the trial indicated that there were other individuals who participated in the assault, even carrying out more serious actions, such as dragging the victim and stabbing the victim's back using a screwdriver. The dynamics of the involvement of various parties are an important aspect in the legal analysis of this case, especially in determining the level of criminal responsibility of each individual.

The evidentiary process in the trial relies on various types of evidence, one of which is CCTV footage. The existence of CCTV footage as evidence plays a crucial role in providing a visual depiction of the actual incident. This recording can help the Panel of Judges to verify witness statements, identify perpetrators, and understand the series of events more accurately. However, it is important to note that other evidence, such as witness statements and the results of the *visum et repertum*, also play an important role in building the legal construction of this case. The Panel of Judges needs to consider all evidence comprehensively to reach a fair and legally based conclusion.

In the trial process, the defendant was faced with charges based on Article 80 Paragraph (1) of Law of the Republic of Indonesia No. 35 of 2014 concerning Amendments to Law. Republic of Indonesia No. 23 of 2002 concerning Child Protection. This article specifically regulates criminal acts of violence against children, and the public prosecutor is of the opinion that the defendant's actions have fulfilled the elements in the article. The Panel of Judges then conducted an in-depth analysis of the facts revealed in the trial to determine whether the

defendant was proven legally and convincingly guilty of committing the crime charged. In this process, the Panel of Judges considered various aspects, including the defendant's intentions, the impact of his actions on the victim, and the circumstances accompanying the occurrence of the crime.

The final decision of the Panel of Judges reflects an assessment of the entire series of events and evidence presented. In the decision, the Panel of Judges declared the defendant guilty and imposed a criminal sentence. The legal considerations underlying this decision include an analysis of the criminal elements in the violated article, aggravating and mitigating factors, and the purpose of the sentence. This decision is an important part of law enforcement efforts against crimes of violence against children and contributes to the discourse on child protection in the Indonesian criminal justice system. The formulation of the problem in this study is how are the legal regulations related to the crime of ganging up on children in the laws and regulations in Indonesia, and how is the criminal responsibility of perpetrators of ganging up on children in Decision Number 2784/Pid.B/2021/PN Mdn?

## Methods

Research cannot be said to be research if it does not have a research method because the aim of research is to reveal a truth systematically, methodologically and consistently.<sup>9</sup> Judging from its nature, this research is descriptive analytical, namely describing all symptoms and facts and analyzing current problems.<sup>10</sup> Descriptive research is research that merely describes the condition of an object or event without any intention of drawing generally applicable conclusions.

## Result, Discussion and Analysis

### Legal Regulations Regarding Criminal Acts of Assault on Children in Legislation in Indonesia

Child protection is a priority in the Indonesian legal system. Several laws and regulations that are important bases in cases of child assault include:

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<sup>9</sup> Rahimah and Ismail Koto, "Implications of Parenting Patterns in the Development of Early Childhood Social Attitudes," *IJRS:International Journal Reglement & Society* 3, no. 2 (2022): 129–33.

<sup>10</sup> Winarno Surakhmad, *Dasar Dan Teknik Research* (Bandung: Tarsito, 1978).

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1. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

This law specifically regulates children's rights and the obligations of the state, local government, family, and community in protecting children from various forms of violence, including physical and psychological violence. The articles in the Child Protection Law emphasize the best interests of the child and provide criminal sanctions for perpetrators of violence against children.

2. Criminal Code (KUHP)

Although Article 170 of the Criminal Code regulates the crime of ganging up on children in general, other articles in the Criminal Code are also relevant in cases of ganging up on children, especially articles relating to abuse (Articles 351-358), ganging up causing serious injury or death (Article 170 paragraphs 2 and 3), and articles on complicity in criminal acts (Articles 55-56).

3. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA)

This law specifically regulates the criminal justice process involving children as perpetrators or victims. SPPA prioritizes a restorative justice and diversion approach in handling children's cases, but also provides provisions regarding the penalties that can be imposed on adult perpetrators who commit crimes against children.

In order to be able to ensnare the perpetrator of ganging up on a child, several criminal elements need to be fulfilled:

1. There are acts of violence

There must be a physical act that causes pain, injury, or other suffering to the child victim's body. This violence can be in the form of beatings, kicks, or other forms of physical attack.

2. Done Together

The act of violence must be carried out by more than one person together and with the awareness to help each other in carrying out the violence.

3. Towards Children

The victim of the assault was a child, which according to the Child Protection Act is a person who is under 18 years of age, including a child who is still in the womb.

4. Openly (Optional)

Although Article 170 of the Criminal Code states "openly," in practice, this element is not always an absolute requirement, especially if the violent act results in more serious consequences such as serious injury or death.

One of the important points in the legal regulation related to child assault is the existence of a heavier punishment compared to assault on adults. This aggravation is based on the principle of child protection and the vulnerability of children as victims.

1. Implementation of the Child Protection Law

If the perpetrator of the assault is an adult, then the criminal threat regulated in the Child Protection Law can be applied. Article 80 of the Child Protection Law regulates criminal sanctions for perpetrators of violence against children. Paragraph (1) of this article states that a maximum prison sentence of 3 years and 6 months and/or a maximum fine of Rp. 72,000,000.00 for anyone who commits violence against a child that does not cause serious injury or death.

2. Aggravation due to the consequences caused

If the assault results in serious injury to the child, Article 80 paragraph (2) of the Child Protection Law stipulates a maximum prison sentence of 5 years and/or a maximum fine of IDR 100,000,000.00. Furthermore, if it results in death, Article 80 paragraph (3) stipulates a maximum prison sentence of 15 years and/or a maximum fine of IDR 300,000,000.00.

3. Aggravation because the perpetrator is a parent or someone who has a family relationship

Article 80 paragraph (4) of the Child Protection Law provides for even heavier penalties if the perpetrator of violence is a parent, guardian, or person who has a family relationship and is responsible for the care of the child. The penalty can be increased by one third of the main penalty.

4. Application of Article 170 of the Criminal Code with Aggravation

Although the Criminal Code does not explicitly mention children as victims in Article 170, judges can consider the victim's status as a child as an aggravating factor in handing down a criminal sentence. In addition, if the assault on a child results in serious injury or death, then the provisions in Article 170 paragraph (2) and (3) of the Criminal Code still apply with the potential for additional punishment under the Child Protection Law.

In addition to law enforcement against perpetrators, the criminal justice system and laws and regulations in Indonesia also provide legal protection for child victims of assault, including:

1. Legal Assistance and Assistance

Child victims have the right to receive assistance from social workers, psychologists, or advocates during the legal process. The SPPA Law specifically regulates the rights of child victims to be accompanied and receive legal assistance.

2. Identity Protection

The identity of the child victim must be kept confidential to avoid stigma and other negative impacts. The mass media and related parties are prohibited from publishing the identity of the child victim.

3. Psychological and Social Recovery

Child victims have the right to receive psychological and social recovery services to overcome trauma caused by the assault. The government and related institutions have an obligation to provide these services.

4. Restitution and Compensation

Child victims have the right to receive restitution or compensation from the perpetrator for material and immaterial losses suffered as a result of the crime of assault.

5. Child-Sensitive Judicial Process

The judicial process involving child victims must be carried out with the best interests of the child in mind. The examination of child witnesses is carried out in a manner that is not frightening or intimidating, and can be done in private.

The legal regulations related to the crime of ganging up on children in Indonesian laws and regulations show a strong commitment to protecting children from all forms of violence. The Child Protection Law provides a strong legal basis for charging perpetrators of ganging up with heavier criminal penalties, especially if the perpetrator is an adult or someone who has a close relationship with the victim. In addition, the legal system also provides various protection mechanisms for child victims, including assistance, recovery, and restitution. However, challenges in implementation remain, and ongoing efforts are needed to ensure that children in Indonesia are truly protected from ganging up and other forms of violence.

**Criminal Liability of Child Assault Perpetrators in Decision Number 2784/Pid.B/2021/PN Mdn**

Decision Number 2784/Pid.B/2021/PN Mdn determines the criminal responsibility of the defendant Fadli Asyzari for the crime of violence against children, with a sentence of two years in prison. This decision is based on the indictment referring to Article 80 Paragraph (1) of Law of the Republic of Indonesia No. 35 of 2014 concerning Amendments to Law. Republic of Indonesia No. 23 of 2002 concerning Child Protection, which specifically regulates the crime of violence against children. A critical analysis of this decision requires an in-depth examination of the application of the article, the proportionality of the sentence, and the relevance of the context

of the incident in determining the verdict, as well as the broader implications for the juvenile criminal justice system in Indonesia.

In applying Article 80 Paragraph (1) of Law of the Republic of Indonesia No. 35 of 2014, the Panel of Judges argued that the criminal elements in the article were met. The defendant was identified as a competent legal subject, and his actions were considered violence that caused injury to the child victim. However, a more detailed analysis of the trial facts shows that there was a gradation in the acts of violence committed by the defendant compared to other perpetrators. There are indications that other perpetrators committed more serious acts, such as stabbing the victim with a screwdriver and using a machete. Therefore, an argument emerged that the Panel of Judges needed to pay greater attention to the differences in the level of involvement in the crime. The principle of differentiation of criminal responsibility, which recognizes the levels of culpability and involvement in a crime, should be a primary consideration in cases of mob violence.

The proportionality of the sentence is a central issue in the evaluation of this decision. The Panel of Judges' consideration of aggravating and mitigating factors influenced the determination of the sentence. Aggravating factors such as community unrest and the lack of reconciliation with the victim were given significant weight. Meanwhile, mitigating factors such as the defendant's polite attitude at trial, remorse, and never having been convicted before had less influence on reducing the sentence. A thorough analysis of this argument can lead to the view that the Panel of Judges did not provide the right balance in assessing these factors. The sentence of two years in prison can be considered not entirely proportional when compared to the level of culpability of the defendant and his relative contribution to the violence. The principle of restorative justice, which emphasizes restoring relationships between the perpetrator, victim, and community, seems to be less emphasized in this decision.

The context of the incident is an important variable that needs to be considered in the analysis. The defendant was involved in the crime after being the victim of stone throwing, which triggered a spontaneous reaction. Although the reaction does not justify violence, a more comprehensive understanding of the context can provide a more nuanced perspective in determining the sentence. This analysis argues that the Panel of Judges needs to explicitly consider the context of the incident as a relevant factor in mitigating the sentence, while still prioritizing the principle of child protection. The psychological and sociological aspects of human behavior in conflict situations should be part of the legal considerations.



## Conclusion

Legal regulations related to the crime of ganging up on children in Indonesia are comprehensively regulated through Law No. 35 of 2014 concerning Child Protection, the Criminal Code, and Law No. 11 of 2012 concerning the Child Criminal Justice System, with an emphasis on increasing the punishment for perpetrators and protecting child victims, but in its implementation as seen in Decision Number 2784/Pid.B/2021/PN Mdn, there are still challenges in applying the principle of proportionality of punishment, where the factors of the gradation of the perpetrator's involvement, the context of the incident, and the restorative justice approach have not been fully accommodated in the judge's considerations, so that the verdict of two years in prison for the defendant Fadli Asyari can be seen as not paying enough attention to the differentiation of criminal responsibility even though it refers to the provisions of Article 80 Paragraph (1) of the Child Protection Law. Reforms are needed in the practice of judicial proceedings in cases of child assault by paying greater attention to the principle of differentiation of criminal responsibility, proportionality of punishment based on the level of involvement of the perpetrator, the context of the incident as a mitigating consideration without reducing the commitment to child protection, and the application of a stronger restorative justice approach, where judges need to develop more measurable parameters in assessing aggravating and mitigating factors to produce decisions that reflect substantive justice by considering the psychological and sociological aspects of human behavior in conflict situations, while maintaining a commitment to the protection and best interests of children as a top priority in the Indonesian legal system.

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