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## The Role of the Juvenile Court Judge

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### Abstract

*The judge's decision in juvenile court is not only to decide the case but must also take into account the rights of the child. Therefore, the decisions of juvenile court judges must have special aspects that can guarantee justice for children. As legal subjects who do not yet have independence in thinking and acting, children as perpetrators of criminal acts must still have their rights respected. This is what is called justice for children. Juvenile justice judges' decisions must look at the reasons why a child commits a criminal act and not just look at the criminal act that the child has committed. Methodologically, this analysis uses an understanding of understanding approach, namely a method in the study which is intended to understand the judge's understanding as in the description of the decision which is the object of this study. In the decision he makes, the judge must prove that the judge is not funnel the law, but the judge is able find justice based on facts law and dig mark living truth in society. Study This focuses on the formality and substance of the judge's decision from the perspective of formal criminal law, material criminal law, legal science doctrine, legal certainty, justice and expediency.*

**Keywords:** Judge, decision, juvenile crime.

## 1. Introduction

### A. Background

The judge's decision in a child crime case is the law and can be said to fulfill and reflect justice, if the law contains the meaning of substantial (material) justice and procedural (formal) justice. It cannot be called law if it does not contain these two dimensions. The judge's decision is essentially the real law—living law. Because the articles of statutory provisions do not have any meaning, unless interpreted by the judge in his decisions. Therefore, whether a judge's decision can be said to be fair or unfair must also be seen from the same perspective.

The view that cannot yet be convinced that justice is limited to formal state law, says that law is the values and norms that apply in society and not in systematic statements of articles and verses of laws. In line with view thereby is what Stallybrass said, *show me the law in action, show over the* (Stallybrass: A Comparison of General Principles of Criminal Law in England, 2005) prison. In context thereby so trial judge's decision child become real law because direct can felt by society. So that if the judge's decision was no fair so instantly That public will feel injustice, and vice versa.

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The judge's accuracy in examining cases of juvenile crime is very necessary in understanding and interpreting the substantial meaning of the formulation of the articles in the prosecutor's indictment which will later be used as the basis for consideration in his decision. The judge's accuracy must include juridical accuracy, namely accuracy related to the spirit and philosophical basis of statutory regulations. Meanwhile, another type of accuracy is sociological accuracy, namely accuracy related to when, under what conditions and situations, what events are the background, what social values need to be the direction, from which a legal regulation is made.

This research tries to translate how judges with juridical accuracy and sociological accuracy carry out their role as enforcers of justice in revealing facts in court and exploring the truth that lives in society, related to cases of criminal acts committed by children so that the resulting decisions are able to realize substantial justice.

## **B. Problem**

1. How Judicial Judge's Consideration child give influence on the decisions he makes?
2. How the judge expressed it fact truth in follow criminal child?

## **2. Literature Review**

Satjipto Raharjo "stated that discussing law is discussing relationships between humans. Talking about relationships between humans is talking about justice. Thus, every discussion about law, clear or vague, is always a discussion about justice as well. Law cannot be discussed only in terms of its form as a formal building. But it is also necessary to see it as an expression of society's ideals of justice. "Reviewing the judge's decision cannot be separated from the law (Raharjo, 2006). Discussing law cannot be separated from discussing justice. Justice is a word with a million meanings depending on one's perspective in looking at the law. The human perspective in viewing the law determines the truth of the meaning of justice.

Mahmutarom HR stated, "justice has the basic word fair. The term fair has various meanings depending on which point of view we look at it. Adil comes from the Arabic *adala* which means *middle* or *middle*. Then it was synonymous with *wasith* with its derivative *wasith*, which means *mediator* or someone who stands in the middle which indicates a fair attitude. (HR, 2009)

Justice also often known with the term "*justice*" (Danny H, 2007), which is also synonymous with "*righteousness, honesty, equity*" (A.Ed.Schmidgall-Tellings. A. M., 2010.), *fairness, moral rightness, a scheme or system of law in which every person receives his/ her/ its due from the system, including all rights, both natural and legal*". Justice is also equal with the word "*justice*" ((ed), Ninth Edition) means "*the fair and proper administration of laws*".

Justice is the single main issue in every discussion about law. Justice is often debated and contrasted with the concept or meaning of legal certainty and legal benefits. The rationality of justice is diametrically different from the (emotional) sense of justice. The ratio and sense of viewing justice will have an impact on the social attitudes and mental attitudes of law enforcers, especially judges. It is at this point that the meaning or perception emerges by placing justice as the determinative factor of all debates about legal issues and judges. This is also the point at which the judge's decision will determine its degree and status as the only tool or tool *for* seeing and measuring whether the law is rationally fair or rationally fair. The meaning of a fair judge's decision must place the degree of status as a symbol of nobility, dignity, honor of the judiciary (*centripetal*) - also the meaning of the judge's decision must place the degree and status as the only tool/means to resolve conflicts that exist in society (*centrifugal*).

Aristotle, divided "concepts justice into the justice distributive, i.e justice in distribution riches or ownership others for each member public. with justice distributive This is what Aristotle meant balance between what you get somebody with what is appropriate obtained. Justice corrective aim correct events that are not fair. Justice in connection between one person to another person is balance (*equality*) between what is given with what is accepted". The teaching/concept of human justice is the center of all the virtues of the meaning of justice. The meaning of equality, equity, benefit, balance, is the basic terminology inherent in justice itself. Aristotle stated "justice does not have a single meaning" (Machmudin, 2001), justice is a political policy (Raharj., 2006), while according to Amir Mahmud, as quoted by Sidik Sunaryo (Sunaryo, 2004)" divides justice become: *justitia commutative*, justice swap exchange, which gives to each what becomes right or his obligations on base similarity Where performance worth with counter achievement, service in accordance with reply service. *distributive justice*, apportioning justice, that is give to each right or part on base difference, where taken into account quality or quality. *Justitia vindicativa*, proportional justice which gives each person their rights or part based on their respective proportions, including adjustments to the severity of the violation. *Justitia creativa*, justice of creation, namely giving each person the right to freedom to create something according to their creative power in the field of culture. *Justitia protectiva*, protective justice, namely the essence of justice is that power in the hands of humans must be limited and supervised. *Justitia legalist*, legal justice, which gives each person their share of rights as determined by law and state regulations in order to realize general welfare which is a social virtue." "Justice rests on human awareness to give each person what he is entitled to."

According to John Stuart Mill, "justice confess existence rights supported individuals\_ society requires it established rules \_ become kind society to guarantee obligations certain things are tough and for the sake of protection rights individual". Mill emphasized that "the expediency of rules is the essence of justice". Bentham emphasized justice in actions that are beneficial and happy." John Rawl, emphasized "benefit which is the essence of justice must not disrespect the individual".

WD.Ross, said "justice should not undermine our own sense of what is right to do". Aristotle stated "justice requires, at least in some domains, a distribution that accords with virtue and moral perfection. Maximizing happiness in itself is not always good." Richard B. Brandt "justice is expediency and equality". Rescher provides the opinion that "fairness is benefit in the broadest sense, so that equality and inequality depend on the type of economy, in economic scarcity there is only minimal availability, in sufficiency economics equality of distribution prioritizes justice in its broadest sense." Fletcher gave affirmation that *corrective justice responds to a disturbance in this initially just distribution. The aim of corrective justice is to recreate the just distribution that existed prior to the disturbance* (justice corrective respond turmoil demands fair distribution, with objective create return fair distribution and eliminating \_ turmoil demands the ").

The teachings/concept of justice are seen by legal and justice thinkers as something very important. Law is seen as not always synonymous with justice, and has become the basis of inspiration for many thinkers from the Marxist school of thought, critical legal studies and progressive law. The natural law school of law (Fuady, 2013) provides confirmation of just laws that are in accordance with morality or that are in accordance with goodness, not evil. According to Hans Kelsen (Syafa'at, 2006), "the tendency to identify law and justice is to justify a social regulatory procedure, social justice is social happiness".

Discussions about law do not find relevance without talking about justice. Justice can be said to be the life or spirit of the law itself. Any law made anywhere and under any circumstances,

in any society, cannot negate justice as an integral part of it. Enforcing the law is not just about harmonizing the values contained in positive law with certain events and facts in a formal procedural manner. Enforcing the law must be interpreted as upholding justice.

The salient characteristic of the *rule of law concept* is the enforcement of just and precise law (*just law*) (Surbakti, 2012). Adherents of *post-modernism* (Dartmouth, 1994) view justice as leading to respect for pluralism, pluralism is a means and way of achieving justice itself. Zainal AZ emphasizes "legal justice on the implementation of the law with integrity and high morals rather than lofty formulations on paper". Indonesia (Kusumaatmaja, 1978) has a tradition of legal reform and justice is placed in legislation, whereas in America it is placed in court decisions.

Doctrinally, the concepts of substantive justice and procedural justice are known (Gie, 1982). Each of these two concepts of justice has its basis for justification and is very dependent on the perspective and paradigm of its originator. However, the substance of justice is the most important part in giving meaning to justice. Amartya Sen (Sen., 2009.) state that "*the materials of justice are lives, freedom, capabilities, happiness, well-being and capabilities, equality and liberty*".

Judges' decisions that guarantee fair legal certainty when seen in Plato's view must contain virtues (Benn.). The judge's decision contains the virtue of justice, namely the judge's decision must contain the values of *wisdom*, fortitude, self- *control* and *justice*. These virtues in justice are a reflection of the qualities that judges must have and must have as special human beings who uphold law and justice on earth.

Substantive justice is not just a doctrine that must be debated in a free academic platform and in the independent exercise of power by judges. Justice must be found and sourced from the values that exist in society. The freedom of the academic platform and the independence of judges in exploring, following and understanding substantive justice must place their degree of validity on the realization of the ideals of a prosperous life physically and mentally for society. *Wealth Maximization* theory (maximizing wealth) from Richard Posner (Fadjar, 2013) states that "judges in deciding a case must be in accordance with the interests of society".

The legal interests that are the basis and goal for judges in deciding cases are not always identical to the interests of society. Interests in the context of justice must be seen as a balance of rights (Raharjo, 2006) and obligations. A judge's decision that reflects the importance of balancing rights and obligations not only guarantees balance in human life, but also reflects the breadth of the judge's virtuous nature.

Apart from the elements of justice that must be fulfilled, the decisions of juvenile court judges must also provide legal certainty and benefits. Certainty is definite matter (circumstance), provision or decision. Legally \_ true must sure and fair. It must be a guide to behavior and is fair because the code of behavior must support an order that is considered reasonable. Only because it is fair and implemented with certainty can the law carry out its function.

Legal certainty is a question that can only be answered normatively, not sociologically. According to Kelsen, law is a system of norms (Rato, Filsafat Hukum Mencari: Memahami dan Memahami Hukum, 2010). Norms are statements that emphasize the "should" or *das sollen* aspect, by including several rules about what should be done. Norms are the product of deliberative human action. Laws containing general rules serve as guidelines for individuals to behave in society, both in their relationships with fellow individuals and in their relationships with society. These rules become limits for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal

certainty. (Marzuki, 2007) Normative legal certainty is when a regulation is created and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not give rise to doubt (multiple interpretations) and is logical. It is clear in the sense that it forms a system of norms with other norms so that it does not clash or give rise to norm conflicts. Legal certainty refers to the application of law that is clear, permanent, consistent and consistent, the implementation of which cannot be influenced by subjective circumstances. Certainty and justice are not just moral demands, but factually characterize the law. A law that is uncertain and unwilling to be fair is not just a bad law. (Cst Kansil, 2009)

According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules so that individuals know what actions they may or may not carry out, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules individuals can know what the State may charge or do to individuals. (Syahrani, 1999) Legal certainty is a guarantee regarding laws that contain justice. Norms that promote justice must truly function as rules that are obeyed. According to Gustav Radbruch, justice and legal certainty are permanent parts of the law. He believes that justice and legal certainty must be taken into account, legal certainty must be maintained for the sake of security and order in a country. Finally, positive law must always be obeyed. Based on the theory of legal certainty and the values to be achieved, namely the values of justice and happiness. (Ali, 2002)

### 3. Discussion

#### 1. Considerations Juvenile Justice Judge Provides Influence on the Decisions he Makes

If we look at the way it is formulated, criminal acts can be divided into two, namely: criminal acts that are formulated formally are called formal criminal acts (*formeel delicten*) and criminal acts that are formulated materially (*material delicten*). A formal criminal act is a criminal act that is formulated by prohibiting the carrying out of certain behavior, meaning that in the formulation it is explicitly stated that certain forms of action are prohibited. This particular act is the subject of prohibition in formal criminal acts. In relation to the completion of formal criminal acts, if the prohibited act is completed then the criminal act is also completed, regardless of the consequences or depending on what the consequences of the act are. For example, in the crime of theft, if the act of taking is complete, then the theft is complete.

Meanwhile, material criminal acts are criminal acts that are formulated by prohibiting them from causing certain consequences, where certain consequences are forbidden or prohibited by law. The emphasis of prohibition is on causing prohibited consequences, and does not depend on the completion of the behavior.

In proving the prosecutor's accusations, the judge uses evidence to find the truth. During the examination of witnesses and defendants, the judge knows the way of life and state of morality of the defendants and witnesses. The judge may refer to the doctrine that the primary objective of punishment is not retaliation. The purpose of punishment in relative theory, namely, punishment is not as retaliation for the perpetrator's mistakes but as a means of achieving useful goals to protect society towards social prosperity. Sanctions are emphasized on their purpose, namely to prevent people from committing crimes, so they are not aimed at absolute satisfaction of justice. The aim of punishment appears as a means of prevention, both special preventive *aimed* at the perpetrator and general preventive *aimed* at the community. This reason shows the judge is insightful wide and open, no narrow only look at actions criminal defendant just.

The evidentiary system adopted both according to statutory regulations and according to legal science doctrine, is used as a basis by the judge in proving the elements of the defendant's actions and mistakes properly and correctly. The evidentiary system is closely related to the legal discovery system. The legal discovery system is essentially a substantial justice discovery system. If this is not the basis for the judge's frame of mind who decides the case, of course the validity of the substance of justice contained in the decision is questionable.

Academically, the evidentiary system applied by judges must be seen from a juridical perspective, legal doctrine and jurisprudence. Because with these three aspects we can analyze whether a judge's decision has used the correct logical thinking or not.

According to Yahya Harahap (Harahap, 1993), court trials should not be arbitrary and arbitrarily prove the defendant's guilt. So, proof has meanings, among others:

- 1) provisions that limit court proceedings in their efforts to seek and maintain material truth. Even the judge, the defendant's public prosecutor or legal advisor are each bound by the provisions of procedures and evaluation of evidence determined by law. Judges and prosecutors must use evidence in accordance with the law, while the defendant cannot freely defend something he considers to be true outside the provisions of the law.
- 2) In connection with the above definition, the judge, in searching for and placing the truth that will be handed down in a decision, must be based on evidence that has been determined in law.

With thereby in the judge case follow crimes committed by the judge's children must be carefully in understand and interpret meaning substantial from formulation the articles made base consideration in the verdict. The judge must be careful covers thoroughness related with passion and foundation philosophical regulation legislation. Whereas another accuracy is thoroughness sociological, that is related accuracy with at the moment when in what conditions and situations, events what's in the background, need values social what to be referrals from a regulation legislation the mad.

## **2. Disclosure of Truth Facts in Juvenile Crimes**

Act crimes committed by children is follow criminal nature special. The specificity is on the subject the law is not yet independent in think nor Act. So that proper considered in the judge's decision was a factor of outside self the perpetrator who pushed happen follow criminal. So that trial judge's decision child No only contains the formalities of formal criminal law, material criminal law, legal science doctrine, legal certainty, justice and expediency. Judicial judge's decision the child must prioritize whether the frame of mind of the judge who decided the case was coherent or systematic. Regarding the formality of the juvenile court judge's decision, the author uses 5 indicators in the analysis, namely:

### **a) Guarantee justice procedural**

Judicial judge's decision child must capable ensure justice procedural. Justice procedural can obtained if the judge's decision is made in accordance with procedure law formal or mandatory procedural law made base For make verdict. By academic procedure internal procedural law the judge's decision can also be called as method in effort reach objective. So the judge's decision is satisfactory procedure procedural law can said as the judge's decision is guaranteed certainty law. Beside That provision procedural law is intended for frame and guide the judge in make decision not to go out from the proper context and so that the judge is also in make decision focused on fulfillment justice procedural that becomes an integral part of justice substantial.



The judge's accuracy disconnect follow criminal children are very necessary inside understand and interpret meaning substantial from formulation the articles made base consideration in the verdict. The judge must be careful covers thoroughness juridical ie thoroughness related with passion and foundation philosophical regulation legislation. Whereas Another accuracy is thoroughness sociological, that is related accuracy with at the moment when, in what conditions and situations, events what's in the background ? back , need values social what to be referrals from a regulation legislation the made.

In system Justice criminal child, the judge should no limited to tools evidence presented by the prosecutor. The judge has freedom For look for tool other evidence beyond that presented by the prosecutor, the judge must active dig and assess all tool evidence presented by the prosecutor. The judge's activeness for dig and assess all tool evidence submitted prosecutor, nature must for obtain the judge's belief that child has do follow the crime charged.

b) Application law criminal material, concerning elements follow crime and guilt

For see in a way carefully, is it? judge's decision in decision Justice child has in accordance with provision law criminal material or not yet, you have to started from analysis related with base law indictment. This matter important, remember whatever the judge's decision in essence is law criminal actual material. With he determined the articles that have been violated by a child in letter indictment, provide limitation to the judge for only inspect article since beginning already determined prosecutor in indictment. The judge didn't Can disconnect outside article since beginning determined prosecutor in indictment. Because nonconformity between indictment, prosecution and verdict, will caused nonconformity substance justice contained \_ in the judge's decision. Nonconformity judge's decision with substance justice, same with the judge's decision was no in accordance with provision law criminal material Good in a way doctrine nor in a way academic as well as values progressive justice. \_ Furthermore For pay close attention is the judge's decision in accordance or No in accordance with values fair law criminal material, yes seen from is the judge's decision uses source other laws (values living law \_ in society, that is form law custom and/ or Habit). Judge inside decision this is very impressive adhere to understand legism , that is law is Constitution.

c) Reasoning logical (coherent and systematic) laws in \_ decision

The judge's decision is actual law. \_ So that understand trial judge's decision child No can in a way Good bad but in a way True False. Likewise judicial judges child in make decision must leave from paradigm right wrong isn't it from Good bad. Inaccuracy use logic will give rise to error logical in a way systematic. Error logic in a way systematic, resulting error in understand law and justice. Judge as door final discovery and enforcement law and justice, have obligation use logic in a way right inside \_ understand law For find law and justice within the verdict.

d) Values of Justice and Benefit as well as philosophy the punishment applied for disconnect case

By academic, judicial judge's decision child must accommodate mark justice and expediency, because of two things the become spirit law Because the judge's decision is actual law. So that if the judge's decision was no accommodate mark justice and expediency, already goods Of course lost his spirit. Therefore the judge's decision was no accommodate mark justice and expediency no can see as actual law.

Judge and law are two words that contain meaning The same ie You're welcome must contain justice. The judge has task main straighten up justice whereas spirit law is justice. The problem is in what is the reality (sein). Correct thereby.

Correct law is the law must found inside values that exist and develop in society. Because essence law is justice, expediency and certainty. In the justice Already goods Of course there is mark certainty, and within certainty Already Certain There is mark usefulness. This is it essence actual law. Judicial judge's decision child is correct decision when in it contained meaning that the judge 's decision have mark justice, certainty and expediency. A decision have mark justice, if within decision the contained meaning mark justice according to society and values justice according to formal law. Have mark justice according to society, meaning the judge 's decision No contradictory with existing values and sense of justice in society.

Size that the judge's decision was no contradictory with mark justice public is No exists resistance and rejection the judge's decision is made by the public. Whereas trial judge's decision child has fulfil justice formal law, if within the judge's decision has been accommodate base philosophical, juridical, and sociological from made law the in a way comprehensive. Judicial judge's decision child said has in accordance with justice formal law, if the judge has right inside \_ make construction law in a way systematic and logical. Whereas trial judge's decision child can said has fulfil principle usefulness, if substance the judge 's decision can used as base For awaken perpetrator follow criminal, yes used as base For do prevention follow criminal, and can used as base For make policy punishment. If trial judge's decision child Already in accordance with justice and expediency that, already goods Of course the judge 's decision Already ensure principle certainty. Certainty For get justice and expediency through judge's decision. Following will explained is judge's decision in case the Already fulfil principle justice, benefit and certainty law.

e) Professionalism of judges in operate code ethics judge's behavior

Code of ethics and codes the judge's behavior is intended as one of the effort For guarantee and maintain judge's professionalism. Because the judges are professional will capable make a fair, definite and beneficial decision for law, perpetrators, victims, state and society If the judge doesn't professional so will threaten the establishment of a true rule of law, because judges are state official who organizes it power judiciary for the sake of upholding the rule of law.

Judges must be professional interpreted as frame normative guard honor, nobility his dignity. Judicial judge children who don't professional is a judge who does not guard honor and nobility his dignity in a way Correct. One of method For see whether the judge is professional or No professional can through his behavior. The judge's behavior can seen from substance the verdict, what? fair or No fair, no benefits and no Certain. Ethics is is very important moral law in effort prevent and protect honor and nobility the dignity of the judge.

Judicial judge's decision child which is the essence of the entire meaning of justice, is required to be able to provide guarantees of certainty, justice and benefit. From several opinions about justice above, it can be formulated the elements of the meaning of justice, which must and must be the basis for judges in deciding cases, are as follows:

- a. Impartiality, balance of rights and obligations, equality, harmony, existence of individual rights, not destroying one's own feelings, acting according to obligations, human awareness of other people's rights, one's own values.
- b. Truth, honesty, morality, propriety, social virtue, happiness, goodness, integrity, highest virtue, virtue in knowledge.
- c. Not arbitrary, protecting human interests, procedural, certainty, usefulness of rules, values outside the law, respect for diversity, order, community interests, crystallization of community values, institutional morality.



#### 4. Closing

1. Considerations Judges must made basis by the judge inside disconnect case follow criminal child professionally. In his consideration the judge must capable disclose facts at trial and value truth that lives in society. Judicial judge's decision child ideally load a. reasons and grounds verdict. b. specific article from regulation relevant legislation, or c. Source law No written that was made base judge. With so the judge has explore, follow and understand values law and a living sense of justice in public. So that the judge's decision is appropriate with law and reflects a living sense of justice in public.
2. Disclosure of Facts and Truth by Judges for Realize Justice in case follow criminal children must be able to guarantee procedural justice. Procedural justice can be obtained if the judge's decision is made in accordance with formal legal procedures or procedural law which must be used as the basis for making decisions. Academically, procedural law procedures in a judge's decision can also be referred to as a method for achieving goals. So the judge's decision has fulfilled procedural law procedures so that it can be said to be a judge's decision that guarantees legal certainty (formal). Apart from that, procedural law provisions are intended to frame and guide judges in making decisions so that they do not go out of their proper context and so that judges in making decisions are directed towards fulfilling procedural justice which is an integral part of substantive justice.

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