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Strength of provision and law protection of children's witnesses

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ABSTRACT

The purpose of this study is to explain the concept of a child witness according to the criminal evidence proving law, and how the protection for children as a witness, as well as how the strength of evidence of child testimony in the criminal justice system. This research is normative legal research that focuses on secondary data by describing the execution of religious courts in regulating child custody cases. The type of data used is the type of primary data and secondary data. Analysis of the data used is a qualitative way with the legislation approach, case approach, and analysis approach. The results showed that the concept of a child's Witness does not qualify as valid witness evidence. Children as Witnesses are entitled to receive legal protection as regulated in the Child Protection Act and the Criminal Justice System for Children and the Witness and Victim Protection Act. The strength of proof of a child's testimony only has value if it is connected with other evidence..

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Introduction

Children who are witnesses must receive legal protection. This is motivated by a number of things, namely first by paying attention to the child's mental development if later the child who witnesses it is difficult to communicate with the outside world, and eventually do not dare to leave the house, and are not confident, or traumatic for the child. Need special attention and special protection and recovery of his psyche or psychic after the event he witnessed. Second, a child who has been a witness of a crime is feared to imitate the behavior he sees so that there is a possibility that the child if he can become a criminal offense. Third, children who are victims feel that when they grow up, children their age must also feel what the victim felt when he was a child, a kind of traumatic impact that lasts until he is an adult. It is feared that it will cause children to be overcome with envy if children now do not feel what the victim felt as a child.

This study aims to explain the concept of a child witness according to the criminal evidence proving law. This paper also seeks answers on the protection for children as a witnesses, as well as evaluation of the strength of evidence of child testimony in the criminal justice system.

This research builds on a normative legal research that focuses on secondary data by describing the execution of religious courts in regulating child custody cases. The type of data used is the type of primary data and secondary data. Analysis of the data used is a qualitative way with the legislation approach, case approach and analysis approach.

The reminder of this study is organized as follows. The next section provides the law protection of children's witness with fundamental concepts on children's protection, evidence and so on. Finally, conclusions of the study are presented in the final section.

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Law protection of children's witness

In the criminal law enforcement process the evidence, Yahya Harahap believes that the evidence is the provisions that contain inheritance and guidelines on the ways that are justified by the Law to prove the wrongdoings charged to the defendant (Harahap, 2003). One of the legal proofs in a criminal case is a witness. A witness is a person who can provide information for the purposes of investigation, prosecution and trial of a criminal case which he hears himself, sees for himself and experiences himself (Fitriani, 2019). Every person who is a witness is obliged to be a witness in a criminal process and if he refuses the obligation, that person may be subject to a criminal offense based on the provisions of the applicable law, this is stated in the explanation of Article 159 paragraph (2) of the Criminal Procedure Code. If a person who testifies as a witness in a trial has fulfilled the requirements for the validity of a witness statement as evidence provided for in the Act, then this certainly does not cause a problem in proving criminal cases, but there are times when a criminal act is suspected it has happened just witnessed or experienced by a child who is still brought to age.

Witness information can be considered valid as evidence and has the strength of valid proof, according to Article 160 paragraph (3) of the Criminal Procedure Code, that in providing information, a witness must first take an oath or promise so that the witness's statement can be considered valid as evidence. In Article 171 paragraph (1) of the Criminal Procedure Code explains that children who are not yet fifteen years old and have not married, they may provide information without an oath. Therefore according to the Criminal Procedure Code the information provided by children is not valuable evidence of legal witness testimony, but their information can be used as a guide only, as explained in the explanation of Article 171 of the Criminal Procedure Code. Furthermore, from the provisions of Article 185 paragraph (7) of the Criminal Procedure Code it can be understood that witness statements which are not sworn in even though they are compatible between one witness and another witness, then witness statements without oaths are not evidence but if the statements are in accordance with statements from sworn witnesses used in addition to other valid evidence (Ansorie, 2008). The obstacle in proving a criminal offense at a trial is when a child without an oath becomes a witness in a crime and cannot witness other witnesses who are sworn in to corroborate the information given by the child as stated in Article 185 paragraph (7) of the Criminal Procedure Code (Krisnamurti, 2016).

In the case of child testimony, when examined in the Child Protection Act (UU PA) and also the Shrimp Act the Criminal Justice System for Children (SPPA), the child is conceptualized as a human being not yet 18 years old. But in the concept of witnesses in the Criminal Procedure Code that can be heard as a witness testimony is a human or person over the age of 15 years. For example in the Ambon District Court Decision Number 519 / Pid.B / 2011 / PN.AB on the murder case and the Decision of the District Court of Digala Number. 208 / Pid .B / 2010 / PN. Mgl against an obscene criminal case, in which the Supreme Court received an appeal and canceled the District Court's decision in the Supreme Court's Decision No.1180 K / Pid / 2012 and the Supreme Court's Decision No.979 K / Pid.Sus / 2011 which stated the defendant proven and guilty of committing a crime. However, there are also several examples of cases where the judge accepts and considers the information given by the child witness and convicts the convicted person, which is contained in the Decision of the Pekanbaru District Court Number 615 / Pid. Sus / 2016 / PN. Pbr against sexual abuse, Decision of the Padang District Court Number. 242 / Pid. Sus / 2015 / PN.Pdg against criminal cases in Domestic Violence and the Decision of the Central Jakarta District Court Number 1591 / Pid.B / 2015 / PN.JKT. PST against Negligence criminal cases cause another person to die. In that case the defendant was found guilty of committing a crime.

From a number of examples of these cases it can be seen that the information given by a child without an oath is not all considered by the judge even sometimes the information is set aside because the information is considered not a valid evidence because it is not given under oath. In various cases handling legal cases that occur in the ground water, often sticking out to be the subject of public discussion because the court's decision is considered to ignore the values of justice that should be felt by the public and justice seekers. The legal process in the Indonesian judicial environment has so far been deemed not to fully reflect the true values of justice (Sutiyoso, 2010). With the difference in the decision handed down by the judge in a criminal case related to the information given by the child without an oath, the writer is interested in discussing it in my paper. Based on the background of the problem above, the problem examined in this paper is how is the concept of a child witness according to the criminal evidence proving law? And how is the protection for children as a witnesses, as well as how the strength of evidence of child testimony in the criminal justice system?

Information Requirements as Evidence

Witness understanding can be formulated, that the witness is a person who knows, sees or hears or experiences what he witnessed. Information about what is known to itself, heard directly, or seen directly or experienced itself, that is the testimony of witnesses. So that the qualifications of witnesses are people who know themselves not knowing it from other people, or other parties. Hearing it directly is not heard directly from other people, or he experienced himself what events he explained it. So that the quality as a witness is fulfilled, and not classified as a witness de auditu.

There are several conditions that must be fulfilled by a statement that can have value as legal evidence. For a testimony to have strength as evidence, it must have the following conditions:

a. Objective Requirements:

*May not be together as a defendant
There must be no family relations*

Able to be responsible, i.e. who is 15 years old or has been married or has no memory loss.

b. Formal Requirements:

*Testimony must be given at the hearing
That testimony must be pronounced under oath
Not used the principle of unus testis nullus testisc.*

Subjective / material requirements:

- *The witness explains what he heard, saw and experienced*
- *The basics or reasons why the witness saw, heard and experienced the something explained.*

Article 170 of the Criminal Procedure Code states that because of their work, dignity, or position manifested in keeping secrets, they can submit a request to be released from the obligation to provide testimony as witnesses. According to the explanation of the article, the job or position that determines the obligation to keep a secret is determined by the legislation. In Article 171 of the Criminal Procedure Code an exception is added to give testimony under oath:

- *Children who have not been quite fifteen years (15) and have never been married.*
- *People who are mentally ill or mentally ill even though they have good memories.*

In Article 160 paragraph (3) of the Criminal Procedure Code, it is stated that before giving testimony, witnesses must take an oath or promise according to their respective religions that they provide the truthful information and none other than the truth. Oath swearing is an absolute requirement, it can be read in Article 161 paragraph (1) and (2) of the Criminal Procedure Code that in the case of a witness or expert without a valid reason refusing to swear or promise as referred to in Article 160 paragraphs (3) and (4), then the examination of him is still being carried out, while he is in a letter stipulating the presiding judge may be held hostage in the place of state detention for a maximum of 14 (fourteen) days (paragraph (1)). In the event that the hostage period is past and the witness or expert does not want to be sworn or make a promise, the information given is information that can strengthen the judge's conviction (paragraph (2)). Elucidation of Article 161 paragraph (2) of the Criminal Procedure Code shows that oath swearing is an absolute requirement: "Information from witnesses or experts who are not sworn or make promises cannot be considered as valid evidence, but only as statements that can strengthen the judge's conviction". This means that witnesses without being sworn in do not constitute testimony according to the law, nor do they constitute a clue, because they can only strengthen the judge's conviction. Whereas the testimony or other evidence is the source or basis of the judge's conviction. Somewhat read Article 165 paragraph (7) of the Criminal Procedure Code which states "witness testimony that is not sworn even though it is in accordance with the others, is not evidence but if the statement is in accordance with the testimony of witnesses who are sworn in can be used as additional other valid evidence". Article 248 of the Criminal Procedure Code only states that witnesses are sworn in by the chairman.

In the criminal law the power of proof on witness evidence is indeed very important, the judge authorized to assess the evidence. In deciding cases, judges are not only based on valid evidence but must also be added to the conviction of Judges, Witness testimony is one of the legal pieces of evidence. However, to make a witness statement as a valid evidence must meet the witness statement requirements. In this case, the child in providing testimony does not meet one of the witness statement requirements, that is, the child's statement is not given with an oath. Child witness testimony given without an oath will result in whether the information is valid or not as evidence in a criminal case.

Child witness testimony given without an oath is not a valid proof. But the witness testimony of the child can be used as a clue. Based on the evidentiary system adopted by the Criminal Procedure Code, in a proof of a criminal case the judge makes the decision based on the judge's conviction based on the legal method and evidence according to the law. Therefore, a hint that appears greatly influences the value of evidence from evidence and influences the judge's conviction. The judge in issuing a decision in a criminal case requires a proof that is carried out to find out whether the actions charged by the defendant are proven or not. According to the Criminal Procedure Code the Judge's decision in a criminal case is based on at least 2 (two) valid evidences plus the judge's conviction (Pramudita & Santoso, 2017). The process of proving criminal cases, for child witnesses, the judge will assess the strength of the witness testimony of children based on the confidence that results from the instructions that arise from any evidence presented by the Public Prosecutor in the trial so that a match arises between the testimony of witnesses one with other witnesses so that the actions alleged in the accused can be known whether or not proven. However, in addition to being guided by the conviction of the existing instructions, the judge is also inseparable from the applicable regulations.

For witness evidence to meet the power of proof, the witness must fulfill the requirements:

- *People who are healthy mind, mental, and memory*
- *Witnesses do not include people who are declared as not capable of law, for example, witnesses are not yet mature or witnesses are still under control.*
- *Witnesses cannot be accepted as witnesses if they have a familial relationship, work relationship with the litigants.*
- *A witness is a person who hears, sees, and knows directly an event. Thus the witness must not hear an event from another person, hear or see from another person. A witness is a person who has experienced / witnessed an event.*

- Witnesses must be more than one. One witness is not a witness. This means that if there is no other evidence that meets the requirements, then the number of witnesses presented must be more than one.

The quality of witness statements, can be seen in Article 185 of the Criminal Procedure Code, which is as follows:

Witness testimony as evidence is what the witness stated at the court hearing;

The testimony of a witness alone is not enough to prove that the defendant is guilty of the actions charged with him;

The provisions referred to in paragraph (2) do not apply if accompanied by another valid evidence;

The statements of several standalone witnesses about an event or condition can be used as legal evidence if the witness' information is related to one another in such a way as to justify the existence of a particular event or condition;

Neither opinion or fiction, which was obtained from the results of thought alone, did not constitute witness testimony;

In assessing the truth of a witness's testimony, the judge must seriously pay attention:

- *Conformity between witness statements or one with the other;*
- *Conformity between witness testimony and other evidence;*
- *Reasons that may be used by witnesses to give certain information;*
- *The witness's way of life and morality and anything that generally can affect the reliability of the information.*

Information from witnesses who are not sworn in even if they are in accordance with one another, do not constitute evidence, but if the information is in accordance with statements from witnesses who are sworn in can be used as additional evidence of another valid.

The child witness concept

Witnesses in our criminal law are well-known types of witnesses, namely victim witnesses, witnesses who are mitigating (a de charge), witnesses who incriminate (a Charge), witnesses hear from others (*testemoni de audito*), crown witnesses (*witness kroongetuide*). whistleblowers, witnesses who want to work together to uncover cases (Justice Collaborator) (Ilyas, 2008). While other different opinions can be seen in Amir Ilyas's book quoting Muchamad Ikhsan's opinion; 2012, the title of the book Witness Protection Law in the Indonesian Criminal Justice System, that the types of witnesses are distinguished namely; Victim Witness, Crown Witness, Verbal Witness, a charge witness, and a de charge witness.

Specifically in the Criminal Procedure Code it is not mentioned about the types of witnesses, but the position of witnesses is very important in criminal law enforcement, where in article 184 the Criminal Procedure Code places witness testimony as one of the evidences, and is ranked first compared to other evidences. Likewise child witnesses in the draft Criminal Procedure Code do not mention what child witnesses are, but the Criminal Procedure Code regulates witnesses must be over 15 years of age to be able to take an oath, children or persons under 15 years cannot be sworn to become witnesses. And the Criminal Procedure Code confirms that oaths are a condition for witnesses to provide information so that they are legal according to criminal procedural law and heard as witness testimonies, if an oath is not taken then the statement before a court hearing is not as witness testimony, but only as a statement giving no oath. Child witnesses are not mentioned in the Criminal Procedure Code, what is the concept, but in the SPPA Law it is mentioned that the concept of a child witness is called as a Child Witness.

Children in Indonesia's positive legal concept are affirmed in the Child Protection Act, that a child is a person who is not yet 18 years of age, in Article 1 point 1 of the BAL it is conceptualized a child as someone who is not yet 18 years old (eighteen years) including a child in the womb. So if a person or legal subject is older than 18 years then it is conceptualized as an adult or adult legal subject. This division of people based on age is intended by law to apply different laws and to apply the principle of benefit and justice. intended, and expected his future to be good. So that the law places children in a different place from adults in terms of giving sanctions or the application of formal legal norms.

Law No 11 of 2012 concerning SPPA in article 1 number 2 states that the term Children in Conflict with Law (ABH) is composed of children who are in conflict with the law, children who are victims of criminal acts and children who are witnesses of criminal acts. Children who are in conflict with the law are often known in the community as children of criminal offenses. Children who are in conflict with the law (Children as perpetrators) are limited in age, ie those aged 12 years and over and not yet 18 years old. Means children under the age of 12 years but doing an act that harms others, or hurt others are not categorized as children who are in conflict with the law (children who commit acts against the law), but children who are called bad boys.

Formally the law for children applies the principle of restorative justice, in terms of sanctions for children with different threats to the threat of legal sanctions for adults. The application of formal law for children who commit crimes is also given different treatment or special treatment in the presence of the Law on the Criminal Justice System for Children (SPPA). Procedures and procedures for law enforcement for children who commit crimes or children who are in conflict with the law, apply procedures or legal processes that are more specific with the provisions that there are law enforcement officers who have a pathway to create process situations that do not make children depressed or afraid. Formal law for children Restorative justice principle applies, in terms of sanctions for

children with different threats to the threat of legal sanctions for adults. The application of formal law for children who commit crimes is also given different treatment or special treatment in the presence of the Law on the Criminal Justice System for Children (SPPA). Procedures and procedures for law enforcement for children who commit criminal acts or children who are in conflict with the law, apply procedures or legal processes that are more specific with the provisions that there are law enforcement officials oriented to create a process situation that does not make children depressed or afraid.

The concept of a Child according to the Child Protection Act (Act No. 35 of 2014) can be distinguished, there are several terms, namely in article 1 number 1 that the Concept of a Child is someone who is not yet 18 (eighteen) years old, including a child in the womb, besides that there is a Child concept Adopted and Foster Children. These two concepts are distinguished in the child's new environment, and are differentiated in the process. For adopted children, it is necessary to have a ruling or court ruling, while foster children do not need a ruling or ruling for the care of the child. Although the essential goals of both concepts are the same, namely for the good of the child in the process of growth and development.

As for the concept of Children as witnesses or CHILDREN'S WITNESS, in our law there is indeed a lack of clarity when it is associated with the child's age criteria. In the Criminal Procedure Code witnesses are conceptualized as those who know, see and experience for themselves what they have given their testimony. Likewise in the witness concept according to the Child Protection Act and the Child Criminal Justice system Act, as well as the Witness and Victim protection Act. However, when our child witness examines the age limit, there is a slight disharmony between the legal norms in the Criminal Justice System Act (SPPA Law) with the Criminal Procedure Code, because the Criminal Procedure Code stipulates that to be legally heard as a witness other than having to be sworn in, it is over 15 years old, and in the Criminal Procedure Code it is stressed that child witnesses cannot be sworn in so that the power is not as a witness only as a giver of information (Djanggih, et al., 2018). That is according to the Criminal Procedure Code as a Witness according to criminal procedural law is in addition to materially is knowing, seeing and or experiencing the events that the testimony is given, then by formal documents must also meet the requirements, namely over the age of 15 years, oaths must be taken before a court before giving his testimony. In this case the person being a witness must be over 15 years old. statement provider, so that the child as a witness ti an oath is not taken in giving testimony before a court hearing. If we associate with the provisions that the age limit as a witness and the conditions for taking oaths are those aged over 15 years and not child witnesses because the child cannot be a sworn witness, so the child is only a giver of information.

As for if we examine in UUSPPA that children who are in conflict with the law consist of children as perpetrators (who are in conflict with the law). Children as Victims and Children as Witnesses. The Act states that the age limit for children is also the same as the Child Protection Act, which is under the age of 18 So in this case the child witness is within the age limit that is under 18 years, then every child under 18 years of age testifies in this case categorized as a Child Witness. If we are relevant to the Criminal Procedure Code that the Child Witness is not sworn in and cannot be classified as a witnesses because formally it is not sworn so that the child giving the information in the criminal justice process is not fulfilling the formal requirements as a witness so that he is only providing information. sworn witnesses are those over the age of 15 years.

If we try to relevance to the SPPA Law and the Criminal Procedure Code there appears to be a disharmony of norms, where in the SPPA Law the norms regulate child witnesses being categorized as under the age limit of 18 years, the Criminal Procedure Code provides a category of witnesses over the age of 15 years. Then it becomes an uncertainty regarding people over the age of 15 years and not yet 18 years, that is, the age range above 15 and under 18 years (16 and 17 years) is classified as a Witness, are Child Witnesses or Non-Child Witnesses? as a Child Witness, because an oath is taken and formally recognized as Witness Evidence, while in UUSPPA aged 16 and 17 years are classified as Child Witness, then it is better if referring to the provisions of the Criminal Procedure Code a child witness is not sworn and is not formally recognized as Evidence The witness is only a giver of information. This is the disharmony that occurs regarding the concept of a child witness if it is related to the age limit of the child in the UUSPPA with the Criminal Procedure Code. So that in this case it is necessary to harmonize the two rules.

But if there is no harmonization of the two rules then we can use the principle of law, in this case the general principle in law that there is a *lex specealis derogate genarlis*, which means that in this case we see which is more specific. If the case is indeed a child criminal case, involving the child as an offender or in the concept of the SPPA Act it is called a child in conflict with the law, then his witness if the child can be accepted from the age of 0 to 18 years and oaths should be taken, the reason why that is because it refers to the SPPA Law as Criminal Justice Act specifically for child cases, so that is what applies SPPA Law. And the concept in the Act recognizes children as witnesses, if so then it is a special provision. And the SPPA Act recognizes witnesses' children or children as witnesses which if we associate with the concept of witnesses in general are those who provide information for the purposes of investigation, prosecution, about a criminal case which he heard himself, he saw for himself, he heard himself, or he experienced himself about a criminal case that he gave the statement, so that he as evidence of witness testimony as drafted in the Criminal Procedure Code.

The child who turns out to be the only one who knows for himself, or sees it for himself or hears it himself or also experiences it himself, naturally has fulfilled it materially as evidence, especially considering that the child tends to be innocent and honest in conveying something. Only if formally in the Criminal Procedure Code regulates witnesses are people whose age must be over 15 years, this is a formal requirement in the Criminal Procedure Code. However, if the case is specifically a child criminal case, special

provisions are applied in the SPPA Law and in this case the Criminal Procedure Code can be distorted because it is a general provision (*legi generalis*). clear and convincing evidence, is the level of clear and convincing evidence (Fuady, 2012).

Child protection as a witness

Children's rights according to the law are part of human rights that must be guaranteed, protected, and fulfilled by parents, family, community, state, government and local government. (article 1 number 12 of the Child Protection Act). The rights of children are variously stated in the Child Protection Act, the right of children to get good care, good care, the right to education, the right to know their origin, the right to know their family, and other rights, including the right to get assistance or advocacy in every case investigation for children in conflict with the law.

In the LoGA it sometimes does not literally mention other forms of children's rights, but it is stated as an obligation of the government and other institutions to do something that is best for children. However, this means that it can be said as a government obligation to children's rights. For example article 59 of the LoGA states that the Government and other State institutions are obliged and responsible to provide special protection to children in emergency situations, children who are in conflict with the law, children from minority and isolated groups, children who are economically or sexually exploited, children who are trafficked, children who are victims of narcotics abuse, in this case Article 59 of the Child Protection Act provides the right for children who are in conflict with the law to get protection from the government or other State institutions. In this concept, the child who is a witness is included in the protection. So it can be said that the child as a witness is entitled to get good protection from the government and other State institutions. In this case the government has established the LPSK (Witness and Victim Protection Agency) as one of the institutions that can carry out the function of providing protection for witnesses including child witnesses.

If seen from the legislation, it is certain that witnesses of a criminal offense get protection from the law, on condition that the witness must tell the truth, swear, and provide complete information about what was witnessed by the witness at the time of the crime. But, of course it's different if the witness is a minor. Children who witness the crime will feel confused and sometimes feel depressed and worried when they see the case, because the children are still experiencing a period of mental development. This is because, mental children who are still unstable still greatly affect the condition of children who are witnesses. By looking at the crime, the child's thinking is changing this world, and sometimes it can even mimic the crime he witnessed.

Therefore, if there are children who are witnesses, especially children who are still small or very young, must receive legal protection. This is motivated by paying attention to children's mental development, of course children who witness criminal acts become afraid of socializing with their outside environment, because they feel insecure anymore. What is meant by influencing the social and emotional development of children is when the child who later becomes a witness has difficulty communicating with the outside world, and eventually he does not dare to leave the house, and is not confident, or traumatic for the child. Need special attention and special protection and recovery of his psyche or psychic after the incident he witnessed.

It is feared that a child who has been a witness of a crime will imitate the behavior he sees so that there is a possibility that the child can become a criminal if he grows up so that the child is not only a witness, even a victim who is a child can also become an offender, because they assume that the crime may be carried out, especially if the crime they see is for personal enjoyment, they may imitate the act as an adult. This is also what we should pay close attention to and think about to provide attention and protection and recovery of the child's mental condition.

In addition to this, there is also the idea that children who are victims feel that when they grow up, children their age must also feel what the victim felt when he was a child, a kind of traumatic long-lasting impact until he is an adult. filled with envy when children who do not now feel what the victim felt as a child. This thinking continues and makes the child who was once a victim of a crime, in the end after becoming an adult offender. If you do not get education and supervision from the right parent, then the above can happen. That is why as stated above children need legal protection by providing certain legal treatment of children who become witnesses or victims of criminal acts, such as being given the correct understanding and deepening of criminal acts, and changing their thinking that such actions are strictly prohibited acts, meaning need recovery of the child's thinking and psychology (Ministry of Planning (Bappenas) Indonesia, UNICEF and Global Affairs Canada, 2015).

As for giving a groom before a hearing a child related to his obligations and rights. The child's right to provide information in court is protected by law, as regulated in Article 12 of the Convention on the Rights of the Child which has been ratified by Indonesia by Presidential Decree No. 36 of 1990 which reads:

- States Parties must ensure that the child is able to form his own opinion, the right to express these opinions freely in all matters affecting the child, the child's opinion is given the proper weight according to the age and maturity of the child.
- For this purpose, the child must primarily be given the opportunity to be heard in court administrative hearings which affect the child, either directly, or through an appropriate representative or body, in a manner consistent with the rules of national legal procedures.

The child as a Witness is entitled to all protections for his own safety, comfort and freedom to convey his testimony, besides the Child as a Witness is also entitled to medical rehabilitation and social rehabilitation efforts, if the child experiences a traumatic state in that situation, or the child is a victim witness criminal acts need physical and psychological recovery. Protection of abagi Children

as Sakasi is also entitled to safety guarantees, both physical, mental, and social; and get ease in getting information about the development of the case. When a child becomes a witness, it is not easy, because it is very sensitive, it is not easy to make the child as a witness in proving a criminal case. Therefore, a child can be made a witness course still by paying attention to children's rights in advance both the rights of children regulated in the Child Protection Act, the Convention on the Rights of the Child approved by the General Assembly of the United Nations on November 20, 1989 and the laws and regulations other regulations. Thus the child's testimony still pays attention to give the child's rights first.

The Child Protection Law also regulates the protection of children who are witnesses. We can see the provisions concerning protection for children in conflict with the law as stipulated in article 64 of RI Law No. 35 of 2014 concerning changes to RI Law No. 23 of 2002 concerning Child Protection, that for children who are dealing with the law, special protection is given. This Special Protection is described in articles 59 and 59 A that the granting of special protection is an obligation of the Government, Regional Government, and other State Institutions. The special protection through efforts to handle quickly, including treatment and rehabilitation in physical, psychological, and social as well as the prevention of diseases and other health problems, including in this special protection case is the assistance of children in every examination in the judicial process. So in this case the existence of a child as a witness in every court process since in the police, the prosecutor's office in the prosecution process and when examined at the court hearing, then the child as a witness both victim witnesses and case witnesses, then the State mandatory in this case the government provides protection in the form of assistance in particular, protection of safety, and special handling of health, psychological and social recovery. This means that efforts are given to provide legal protection and health protection as well as protection of their social rights in order to provide the best for the child and avoid traumatic events in the child's psychological development as a witness due to the event he witnessed.

Legal protection for children as witnesses is also carried out by the relevant State Institutions in terms of witness and victim protection, namely LPSK (Witness and Victim Protection Agency). RI Law No. 31 of 2014 changes to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, stating that every person who is a witness is entitled to get protection based on the principle of respect for human dignity and dignity, security, justice and non-discrimination, and legal certainty.

Strength of child witness evidence

A child can be a witness in a proof of a criminal case in the event that the child plays an important role in proving the case. And fulfilling criteria as evidence of witnesses according to the law, namely fulfilling the formal and material requirements as witnesses. It can be said that a child can be made a witness if the child is a key witness in a criminal case such as a victim witness or in other words the child can be used as a witness depending on the importance of a child witness in a criminal case. Based on the discussion above that the information provided by child witnesses are not evidence, only the testimony of child witnesses can corroborate the statements of other witnesses if the information is in accordance with the statements of other witnesses, supported by other evidence and justified by the defendant (Rischiiana, 2018).

The strength of proof of a witness's testimony as evidence if it is connected with whether or not evidence is valid, it can be said that the testimony of a child witness is not a valid witness statement. This is as contained in Article 160 paragraph (3) of the Criminal Procedure Code that witnesses give statements under oath. Therefore, the testimony of child witnesses given without oaths is not evidence. A statement given by a child without an oath is not an evidence. However, the testimony of the child witness can have the value of evidence if it is compatible with other instruments of evidence. Therefore, the testimony of child witnesses provided without oaths is not a valid evidence in proving criminal cases, but the information provided can have a value of evidence, where the value of the evidence will naturally bring the strength of evidence that will affect the conviction of judges in dropping a decisions in criminal cases. In practice in criminal justice, the information of a child victim of a crime can be recognized as a victim's witness. In this case, the victim is a child, then the child can be a victim witness who although not yet 15 years old can be sworn in as a witness. This is confirmed by the court decisions in Indonesia, for example, the Makassar High Court in deciding the case of the persecution of Ali Akbar who was only 14 years old. Also in the event that there were no other witnesses, the Supreme Court ruled guilty Jauhari Purnomo in the case of child molestation where there were only witnesses of the victim and only evidence of the victim's underwear.

So, indeed materially, children cannot be used as witnesses in court, but in the practice of examining existing criminal cases, children can be used as witnesses and victim witnesses. Therefore, the case should be continued even though there are no adult witnesses as long as there are victim witnesses and other supporting evidence. But it must be realized that in a law enforcement system. According to Dwi Prapti Maryudiati, a child can be a witness in proving a criminal case if the child is a key witness. Because the child is a key witness, the child will still be heard as a witness testimony. One of the examples that places children as key witnesses is children as victims. In this case, the child can be heard as a witness while still paying attention to the child's rights (Rischiiana, 2018). However, formally Children as Witnesses are not classified as Evidence of Witnesses, because formally they do not qualify as witnesses because they are not sworn. But the child who gives testimony before the court is only classified as a giver of information, but if he is a strong giver and moreover as a victim it will be very important for the Judge to become Judge's knowledge as facts of the trial which will become evidence evidence and as the basis of the Judge's Belief. So that in the provisions of the Criminal Procedure Act, the testimony of a Child although not classified as Witness Evidence but will be included as Evidence Guidance and the basis of the judge's conviction, the power will be very strong to shed light on a criminal event and have a proof of value.

Conclusions

Children who are witnesses must receive legal protection. This is motivated by a number of things, namely first by paying attention to the child's mental development if later the child who witnesses it is difficult to communicate with the outside world, and eventually do not dare to leave the house, and are not confident, or traumatic for the child. Need special attention and special protection and recovery of his psyche or psychic after the event he witnessed. Second, a child who has been a witness of a crime is feared to imitate the behavior he sees so that there is a possibility that the child if he can become a criminal offense. Third, children who are victims feel that when they grow up, children their age must also feel what the victim felt when he was a child, a kind of traumatic impact that lasts until he is an adult. It is feared that it will cause children to be overcome with envy if children now do not feel what the victim felt as a child.

The concept of a child Witness does not qualify as valid witness evidence. A child's testimony is only worth information. Children are drawn as witnesses if it is really needed or key witnesses, but legally the criminal procedure is not classified as Evidence of Witnesses but can be classified as evidence evidence and as a basis for the Judge's Belief. However, if it refers to the principle of *lex specialis derogat generalis*, then based on the SPPA Law and based on the theory of a high level of proof that is clear and convincing, the position of the child who was only originally as a giver of information can be a means of evidence. Children as Witnesses are entitled to receive legal protection as regulated in the Child Protection Act and the Criminal Justice system for Children and the Witness and Victim protection Act. Legal Protection against Child Witnesses is Special Protection, and is an obligation of the Government, Regional Governments and other State Institutions to provide protection specifically. The strength of proof of a child's testimony only has value if it is connected with other evidence so that it becomes a fact of the trial, and will have a strong evidentiary value if it meets a high level of proof that is clear and convincing.

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