

Legal Protection of Children as Victims of the Crime of Rape Study of Decision Number 6/PID.SUS-ANAK/2020/PN.SIM

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ABSTRACT

Children are a mandate and gift from God Almighty, which is inherent in the dignity and worth as a whole human being. Child protection is the embodiment of justice in a society, thus child protection is sought in various fields of state and social life. One of the cases in the crime of rape where the victim is a girl aged 6 (six) years. This girl was raped and the perpetrator was sentenced to Article 81 paragraph (1) in conjunction with Article 76 d of Government Regulation in Lieu of Law No. RI. 1 of 2016 concerning the second amendment to the Republic of Indonesia Law No. 23 of 2002 concerning child protection which has been stipulated as Law no. 17 of 2016 which is punishable by a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). The article contains norms in the form of minimum and maximum words in the imposition of sanctions. Judges should decide based on the limits of the minimum and maximum in the norm. However, in this decision the judge determined differently where he was sentenced to 4 (four) years and Job Training for 3 (three) months at the Simalungun Regency Social Service. The application of appropriate sanctions in the decision of the Simalungun District Court Number 6/Pid.Sus-Anak/2020/PN. Sim is at least 5 years old.

Keywords: Child Protection, Criminal Law.

1. INTRODUCTION

Indonesia is a country based on law, so that every human activity or community that carries out their life activities must be based on existing regulations and norms that apply in society. Behavior that is not in accordance with the norms / deviations from these norms can cause problems in the legal field and harm the community. Such abuse is usually labeled by the community as a violation, even as a crime. [1] One of the crime problems that often arise in people's lives is about decency crimes or criminal acts of decency, such as sexual intercourse, rape, obscenity, and others which are very disturbing and detrimental to society, especially for children, women and the elderly. Ironically, this crime of decency does not only happen to adult women, but also to minors. Based on January 1 to July 31, 2020, related to cases of violence against children. Ministry of Women's Empowerment and Child Protection (PPPA). The Deputy for Child Protection of the Ministry of PPPA, Nahar said, the report was obtained from the Online Information System for the Protection of Women and Children (Simphoni PPA). In

total there are 4,116 cases. In detail, the 4,116 cases received by the PPA Symphony consisted of 68 victims of exploitation, 73 victims of TIP, 346 victims of neglect, 979 victims of psychological violence, 1,111 victims of physical violence and 2,556 victims of sexual violence. The KemenPPPA considers these figures to be very worrying for child protection. [2] The definition of victim according to the science of victimology is to provide a deeper understanding of the victim of a crime as a result of human actions that cause mental, physical and social suffering. The aim is not to flatter the victims, but only to shed light on the real role of the victims and their relationship to the victims. According to Arief Gosita, victimology is a field of science or study that examines victimization (crime) as a human problem which is a social reality, covering all aspects related to victims in various fields of life and livelihood. [3] Crime according to the view of criminology in general means human behavior that violates norms, is detrimental, annoying, causes victims, so it cannot be tolerated. Meanwhile, criminology pays attention to crime, that is:

1 Perpetrator who has been found guilty by the court;

- 2 In white collar crimes, including those resolved non-penally;
- 3 Behavior that is discriminated against;
- 4 Population of detained perpetrators;
- 5 Actions that violate norms;
- 6 Actions that get social reactions. [4]

In the juvenile criminal justice system, the definition of a child as a victim of a crime is contained in Article 1 Point 4, it is explained that: "Children who become victims of criminal acts, hereinafter referred to as Child Victims, are children who are not yet 18 (eighteen) years old who suffer physical, mental, and/or economic loss caused by a criminal act". [5] Legal protection for children as victims of crime is regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection formed on the basis of implementation considerations:

- a. That the Unitary State of the Republic of Indonesia guarantees the welfare of each of its citizens, including the protection of children's rights which are human rights;
- b. That every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia;
- c. That children as buds, potentials, and young generations who will succeed the ideals of the nation's struggle have strategic roles, characteristics, and special characteristics so that they must be protected from all forms of inhumane treatment that result in violations of human rights; [6]

The establishment of the KPAI is mandated by Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, in Article 74 it is explained that:

- 1) In order to increase the effectiveness of monitoring the implementation of the fulfillment of Children's Rights, with this Law an independent Indonesian Child Protection Commission is established;
- 2) If necessary, the Regional Government may establish a Regional Child Protection Commission or other similar institutions to support the supervision of the implementation of Child Protection in the regions." [7]

In the perspective of administering Judicial Power, it must be based on Pancasila, namely the power that is responsible to God Almighty, and the 1945 Constitution of the Republic of Indonesia as the main basis and basis for the existence of authority in exercising Judicial Power which is free from intervention in any form. [8] examine and decide cases that are submitted to the court at the Supreme Court and the courts under it in the general court environment, religious court environment, military court environment, state

administrative court environment and at special courts, judges are required to explore, follow and understand legal values and a sense of justice that lives in society. As stated in article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power, "Judges and constitutional judges are obliged to explore, follow and understand the legal values and sense of justice that live in society".

The sentencing of a defendant is entirely dependent on the judge's judgment and belief in the evidence and facts revealed at trial. In accordance with Article 193 paragraph (1) of the Criminal Procedure Code, if the court is of the opinion that the defendant is guilty of a criminal act, the court shall impose a sentence on him. The purpose of every judge's decision that must be in accordance with the law and the sense of justice of the community is the purpose of the existence of judges and judicial power, where in carrying out law enforcement and justice a judiciary is held, and in administering justice, judges are given the authority to examine and decide on cases submitted, and In its authority to examine and decide cases, it must be based on Pancasila and the 1945 Constitution of the Republic of Indonesia for the creation of a legal state of Indonesia. This means that in their obligation to explore, follow and understand the legal values and sense of justice that live in society, judges must interpret the law contextually, namely seeing the legal values that exist in the space and time of the legal community being tried. In imposing sanctions, judges are guided by the elements contained in each decision, of course the judge in imposing a sentencing decision must be in accordance with the Article indictment. In the sense that judges are bound by minimum and maximum limits so that judges are considered to have enforced the law properly and correctly, so that it does not conflict with legal certainty. [8]

Based on Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection Article 1 point 2 General Provisions which contain: "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow and develop. , develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination". According to Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection Article 76 D is: "Everyone is prohibited from committing violence or threats of violence to force children to have intercourse with him or with other people".

One example of a case in the crime of sexual intercourse where the victim is a girl aged 6 (six) years. This girl was raped and the perpetrator was sentenced to Article 81 paragraph (1) in conjunction with Article 76 d of Government Regulation in Lieu of Law No. RI. 1 of 2016 concerning the second amendment to the Republic of Indonesia Law No. 23 of 2002 concerning child protection which has been stipulated as Law no. 17 of 2016 which is punishable by a minimum imprisonment of 5 (five) years and

a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). The article contains norms in the form of minimum and maximum words in the imposition of sanctions. Judges should decide based on the limits of the minimum and maximum in the norm. However, in this decision the judge determined differently where he was sentenced to 4 (four) years and Job Training for 3 (three) months at the Simalungun Regency Social Service. This creates legal certainty.

therefore the author is interested in bringing up the title: **LEGAL PROTECTION AGAINST CHILDREN AS VICTIMS OF THE CRIMINAL ACT OF INJURY (STUDY OF DECISION Number 6/Pid.Sus-Child/2020/PN Sim)**

2. METHOD

The research used in this method is descriptive with normative. [9]The approach used refers to the invitation approach and the case approach. The technique of collecting data is literature study and related party interviews. The data obtained by the author through primary legal materials include related laws and regulations, secondary materials in the form of books, journals, and the internet as well as tertiary supporting materials in the form of legal dictionaries.

3. DISCUSSION

3.1. Regulations and forms of legal protection for children as victims of the crime of rape in the laws and regulations in Indonesia

Children are a mandate and gift from God Almighty, who has inherent dignity and worth as a whole human being. All efforts are made to create conditions so that every child can carry out his rights and obligations for the development and growth of children in a natural way, physically, mentally and socially. Child protection is the embodiment of justice in a society, thus child protection is sought in various fields of state and community life.

According to Sugiri's view, the definition of a child is: "As long as the process of growth and development is still going on in the body, the child is still a child and only becomes an adult when the development and growth process is complete, so the age limit for children is the same as the beginning of becoming an adult. namely 18 (eighteen) years for women and 21 (twenty) years for men. [10]

Children have rights which are also regulated in Law No. 23 of 2002 which has been changed to Law No. 35 of 2014 concerning Child Protection. Children's rights are contained in Articles 4 to 18, which provide an explanation that:

a. Every child has the right to be able to live, grow, develop, and participate fairly in accordance with

human dignity and dignity, and receive protection from violence and discrimination;

- b. Every child has the right to a name as self-identity and citizens. Every child has the right to worship according to their religion, think, express themselves according to their level of intelligence and age, under the guidance of their parenship status;
- c. Every child has the right to worship according to their religion, think, express themselves according to their level of intelligence and age, under the guidance of their parents;
- d. Every child has the right to know their parents, to be raised, and to be cared for by their own parents;
- e. Every child has the right to obtain health services and social security in accordance with their physical, mental, spiritual and social needs;
- f. Every child has the right to receive education and teaching in the context of his personal development and level of intelligence in accordance with his interests and talents;
- g. Especially for children with disabilities, are also entitled to special education, while for children who have advantages are also entitled to special education;
- h. Every child has the right to express and have his opinion heard, receive, seek, and provide information according to his level of intelligence and age for his own development in accordance with the values of decency and propriety;
- i. Every child has the right to rest and take advantage of free time, hang out with children of the same age, play, have recreation and be creative according to their interests, talents, and intelligence levels for self-development;
- j. Every child with a disability has the right to obtain rehabilitation, social assistance, and maintenance of social welfare levels.

Due to the trauma of children who are victims of criminal acts of rape, it can also hinder the process of forming a healthier nation. For this reason, law enforcement against perpetrators of criminal acts of sexual intercourse with children needs to be studied because it concerns the welfare of children and it is the right of every child. The fact is that in society it is still often heard that a child has become a victim of a criminal act of sexual intercourse with a child. The existence of other forms of criminal acts of sexual intercourse against children is certainly contrary to what is desired by the articles in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Various criminal acts of sexual intercourse against children have finally become criminal cases that have been revealed so far, generally carried out by people who still have close relationships or already know well with the victim, both the relationship between the perpetrator and the victim have known each other before.

The definition of victim according to the science of victimology is to provide a deeper understanding of the victim of a crime as a result of human actions that cause mental, physical and social suffering. The aim is not to flatter the victims, but only to shed light on the real role of the victims and their relationship to the victims. Legal protection is all efforts made consciously by every person as well as government and private institutions aimed at securing, controlling and fulfilling the welfare of life in accordance with existing human rights as regulated in Law no. 39 of 1999 concerning Human Rights. Legal protection for children is an effort to protect children to obtain and defend their rights to live, have survival, grow and develop and protect in carrying out their rights and obligations. [11]

In the perspective of administering judicial power, it must be based on Pancasila, namely the power that is responsible to God Almighty, and the 1945 Constitution of the Republic of Indonesia as the main basis and basis for the existence of authority in exercising judicial power which is free from intervention in any form. [12] in article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power, "Judges and constitutional judges are obliged to explore, follow and understand the legal values and sense of justice that live in society". The sentencing of a defendant is entirely dependent on the judge's judgment and belief in the evidence and facts revealed at trial. In accordance with Article 193 paragraph (1) of the Criminal Procedure Code, if the court is of the opinion that the defendant is guilty of a criminal act, the court shall impose a sentence on him. The purpose of every judge's decision that must be in accordance with the law and the sense of justice of the community is the purpose of the existence of judges and judicial power, where in carrying out law enforcement and justice a judiciary is held, and in administering justice, judges are given the authority to examine and decide on cases submitted, and In its authority to examine and decide cases, it must be based on Pancasila and the 1945 Constitution of the Republic of Indonesia for the creation of a legal state of Indonesia.

Based on Law Number 12 of 2011 concerning the Establishment of Legislation. A special minimum penalty is a policy made by the legislature in a special criminal regulation. Specific criminal regulations are criminal regulations made outside the Criminal Code with various sectors regulated in separate laws. Law in Indonesia adheres to the principle of *lex specialis derogate lex generalis* so that special regulations override general regulations. If there is a crime regulated in the Criminal Code and special criminal rules. The special criminal rules that will be the choice of law are not the Criminal Code. The existence of a special minimum punishment makes serious crimes will be recompensed with severe sanctions. Law Number 35 of 2014 concerning Child Protection is one of the government's policies to protect children. Children need to get protection because children are the next generation of the nation. The process so that children can become the next generation of

the nation is not short. Children must get their rights to obtain a decent living, education and care. The act in the form of a child crime is an act that is considered heavy by the legislature. The impact resulting from criminal acts against children can provide physical and mental injuries to children in their growth period. It can be concluded that the provision of criminal sanctions with special minimum provisions for perpetrators of crimes against children is very important. According to D. Simons, which states that a crime (*strafbaarfeit*) is an act that is against the law with an error committed by an accountable person. [13]

Special minimum penalties are also applied by the legislature to prevent the imposition of light criminal sanctions on serious crimes. special minimum criminal sanctions, namely the Law has set its own maximum and minimum limits of criminal sanctions in a criminal offense. In this case, the judge may not impose a sentence below the minimum criminal sanction stipulated in the law. This is indicated by the presence of an offense containing phrases such as "the least" or "the shortest". The judge cannot impose a criminal decision with an amount less than the "least" provision for the offense.

One of the cases in the crime of rape where the victim is a girl aged 6 (six) years. This girl was raped and the perpetrator was sentenced to Article 81 paragraph (1) in conjunction with Article 76 d of Government Regulation in Lieu of Law No. RI. 1 of 2016 concerning the second amendment to the Republic of Indonesia Law No. 23 of 2002 concerning child protection which has been stipulated as Law no. 17 of 2016 which is punishable by a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). The article contains norms in the form of minimum and maximum words in the imposition of sanctions. Judges should decide based on the limits of the minimum and maximum in the norm. However, in this decision the judge determined differently where he was sentenced to 4 (four) years and Job Training for 3 (three) months at the Simalungun Regency Social Service.

The application of appropriate sanctions in the decision of the Simalungun District Court Number 6/Pid.Sus-Anak/2020/PN. Sim is at least 5 years old. Due to the special minimum criminal provisions prohibiting judges from making decisions for less than 5 years. Because the minimum criminal objective when viewed from legal policy is to give fear to the perpetrators of criminal acts. In addition, the judge must also pay attention to whether the defendant deserves or not to be subject to criminal sanctions.

Sentencing is the act of a judge in imposing a sentence on a defendant in accordance with the provisions stated by law and the judge's conviction. Judges have an obligation to know what conditions must be met before imposing a sentence on the defendant. The conditions include:

- 1 because it is based on the facts of the trial, it means that the examination proceeds to the indictment, examination before a trial, defense, prosecution, and decision;
- 2 The facts of the trial prove whether a person is guilty of a crime or not. The crime committed can be done intentionally (*dolus*) or can also be negligent (*culpa*).

In the case at the Simalungun District Court Number 6/Pid.Sus-Anak/2020/PN. The Sim of the defendant ASAP has fulfilled the formulation of the law. The act of the defendant ASAP who has committed the crime of raping a minor has been regulated in Article 81 paragraph (1) of Law Number 35 of 2014 concerning Child Protection. "Everyone is prohibited from committing violence or threats of violence to force a child to have intercourse with him or with other people, will be given a minimum sentence of 5 years in prison and a maximum of 15 years in prison."

The defendant ASAP was based on the evidence received in the Simalungun District Court Number 6/Pid.Sus-Anak/2020/PN. Sim has been proven guilty of rape. The evidence was found based on the testimony of witnesses and the results of the doctor's examination of the victim's child. The results of the doctor's examination found facts that ASAP did indeed commit the crime of rape.

In article 81 paragraph (1) of the Child Protection Law there are elements of actions that can ensnare perpetrators of criminal acts, namely the defendant commits violence or threatens violence, forces the child to have intercourse with him or with other people.

The actions of the defendant ASAP also fulfill the formulation of article 81 paragraph (1), namely the object of the crime committed by the defendant is a child. Based on article 1 number 4 of Law Number 35 of 2014 concerning Child Protection, children who are victims of criminal acts who are not yet 18 years of age experience physical, mental, and/or economic losses caused by criminal acts. Victims of criminal acts that have been committed by ASAP are children under the age of 6 years. It can be concluded from the age of children who are victims of criminal acts committed by ASAP have complied with article 81 paragraph (1) of Law Number 35 of 2014 concerning Child Protection.

For the author, the sentence of imprisonment for the defendant is determined at least 5 years in Article 81 paragraph (1) of the Child Protection Act because he still has a long future. Because in the purpose of law the main purpose of law is to create an orderly and balanced society. This means that the law is used as a means or tool to form a more orderly social order.

3.2. The judge's consideration in imposing the Simalungun District Court Decision Number 6/Pid.Sus-Anak/2020/PN. Sim

Seeing the basis for the consideration of the Simalungun District Court Judge in Decision Number 6/Pid.Sus-Child/2020/PN Sim, because the Public Prosecutor compiled his indictment alternatively. Whereas in accordance with the order of the Criminal Procedure Code, the Judge will immediately consider the indictment which is deemed to be in accordance with the facts revealed at trial, namely Article 81 paragraph (1) in conjunction with Article 76 D of Government Regulation in Lieu of Law No. RI. 1 of 2016 concerning the second amendment to the Republic of Indonesia Law No. 23 of 2002 concerning child protection which has been stipulated as Law no. 17 of 2016 in conjunction with RI Law NO. 11 of 2012 concerning the Juvenile Justice System, with the following main elements:

- (1) Everyone;
- (2) Doing violence or threats of violence to force the Child;
- (3) Have intercourse with him or with another person;

Considering that with respect to these elements the Judge considers the following:

A.d.1. The "Everyone" Element

- Considering that what is meant by "Everyone" in Article I paragraph 1 Article 1 number 16 of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection is an individual or corporation;
- Considering, that based on Article I paragraph 1 Article 1 number 1 of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, a child is someone who is not yet 18 (eighteen) years old, including a child who still in the womb;
- Considering, whereas in Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System in Chapter I General Provisions Article 1 number 2 states that children in conflict with the law are children in conflict with the law, children who are victims of criminal acts, and children who are in conflict with the law. be a witness to a crime. Number 3 states that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime.

A.d.2. The element of "Performing violence or threats of violence to force the child"

- Considering that what is meant by violence according to doctrine is a physical act using body strength or strength

that is sufficiently large and aimed at a person which causes the person to become powerless while the threat of violence is in the form of a threat of physical violence and in this threat of physical force or force This sizeable amount has not yet been realized, but with the threat of violence, people who receive psychological threats become helpless, for example, feelings of fear arise. The threat of violence is to make someone who is threatened with fear because something will harm him with violence. This threat can be in the form of shooting upwards, pointing a sharp weapon, up to a more "polite" action, for example with a call by stating the detrimental consequences if it is not implemented. Forcing is treating, ordering, asking by force.

A.d.3. The element "Having intercourse with him or with another person"

Considering that the element of having intercourse with him or another person is an alternative to several actions, the Judge only chooses one of them that is in accordance with the actions of the child in conflict with the law, meaning that if one of the forms of action mentioned above has been proven, this element has been fulfilled, where based on the evidence and evidence submitted, it is obtained the fact that it is the child in conflict with the law who has sexual intercourse with the victim's child by the child in conflict with the law at the home of the victim's child's parents so that as a result of the actions committed by the child in conflict with the law the victim's child is injured as which is explained in the Visum Et Repertum Number: 1397/VI/UPM/II/2020 dated February 17, 2020 which was drawn up and signed by Dr. MARTHA SILITOGA Sp. OG as a doctor at the Dr. Djasamen Saragih who explains: External inspection:

Exterior inspection:

- There are no signs of physical violence on the head, neck, chest, abdomen, both upper limbs and both lower legs.

Internal inspection:

- Vulva and vaginal canal looks red and irritated;
- Visible hymen tear not to the bottom.

Conclusion:

Hymen not intact, suspicion of blunt trauma.

- Considering, that based on the description and considerations above, the Judge is of the opinion that the elements of having intercourse with him have been fulfilled;
- Considering, that because of all the elements of Article 81 paragraph (1) in conjunction with Article 76 D Changes to the Government in Lieu of Law of the Republic of Indonesia Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection which has been stipulated as Law Number 17

of 2016 in conjunction with Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System has been fulfilled, therefore Children in conflict with the law must be declared legally and convincingly proven guilty of committing acts as stated in the first alternative indictment with qualifications of committing coercive violence. The victim's child had intercourse with him.

- Considering that in order to impose a sentence on a child in conflict with the law, it is necessary to first consider aggravating and mitigating circumstances for a child in conflict with the law; Aggravating circumstances:
 - Actions committed by children in conflict with the law result in deep trauma for the child victims;
 - In this case there has been no peace;
 Mitigating circumstances:
 - Children in conflict with the law act politely in court, admit and regret their actions and promise not to do it again;

Considering, that because a child who is in conflict with the law is sentenced to a crime, he must also be burdened with paying court fees; Taking into account, Article 81 paragraph (1) in conjunction with Article 76 d of Government Regulation in Lieu of Law - RI Law no. 1 of 2016 concerning the second amendment to the Republic of Indonesia Law No. 23 of 2002 concerning child protection which has been stipulated as Law no. 17 of 2016 in conjunction with RI Law NO. 11 of 2012 concerning the Juvenile Justice System and Law Number 8 of 1981 concerning the Criminal Procedure Code and other relevant laws and regulations;

4. CONCLUSION

In article 81 paragraph (1) of the Child Protection Act it has been stated that everyone is prohibited from committing violence or threats of violence to force a child to have intercourse with him or with other people, will be given a minimum of 5 years in prison and a maximum of 15 years in prison. It can be concluded that Article 81 paragraph (1) of the Law contains minimum criminal provisions marked with the phrase "at least" in the offense. In fact, in the decision of the Simalungun District Court Number 6/Pid.Sus-Anak/2020/PN. The Sim did not make a decision based on the minimum criminal provisions written in article 81 paragraph (1) of the Child Protection Act, because the panel because the panel of judges handed down a decision on the defendant ASAP with a sentence of 4 (four) years and Job Training for 3 (three) months in the Simalungun Regency Social Service which is less than the minimum number of sentences imposed by the article. This shows the panel of judges at the Simalungun District Court Number 6/Pid.Sus-

Anak/2020/PN. Sim lacks legal certainty. Legal certainty is a guarantee that the law must be carried out in a good way and function as a rule that must be obeyed.

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