

Criminal Responsibility by Parents as Actors in Crimes of Violence Against Underage Children. Study of the Child Protection Act

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Abstract

Children are one of the human resources that have important potential in the survival of the human generation. Children are also the nation's potential, because it is in them that the fate and hopes of a nation are based in welcoming the sustainability and development of a country. Countries that are aware of the strategic meaning of the role of children in the development and progress of a nation will be more serious about improving the quality of child development starting from growth, maintenance, and fulfillment of children's rights. However, in reality, not a few children are victims of crime. One of the crimes that occur against children is physical and psychological violence. Violence experienced by children that occurs today is not just a problem that only occurs within the family circle, but is a social problem that requires collective attention from all components of society. Children in conditions like this, it is necessary to legally protect the child from anything that is harmful to the child and can guarantee their rights. In Indonesia, the role of law is still not sufficiently in favor of children, children are often the object of non-criminal occurrence. Children should receive the same treatment and protection as adults. As for the provisions of criminal sanctions against perpetrators of crimes of violence against children have been listed in the law Law no. 35 of 2014 concerning Child Protection including protection of children from the act of placing, allowing, doing, ordering to do, or participating in violence against children in Article 80 paragraph (1), paragraph (2), (3) (4), and Article 82 paragraphs (1) and (2), Article 83, Article 84, Article 85, Article 86, Article 87, Article 88, Article 89. Sanctions that can be applied include death penalty, imprisonment and fines.

Keywords: , Crime, Violence, Children, Parents.

INTRODUCTION

The World Health Organization (WHO) defines violence against children as all forms of physical and/or psychological abuse, sexual abuse, neglect and exploitation that have an impact and have the potential to harm children's health, child development or child self-esteem.

The complete portrait of the reality of the child on the face of the world map is in fact not as beautiful as the verbal rhetoric or social jargon labeled for the child, where the child is the future hope for a family, the future development of a country and even children become the next generation for the survival of mankind in the world.

Essentially, a child is a gift from God Almighty to his parents. It is called a gift because not all families are given offspring of a child even though they have built a household for years. As an inseparable part of that gift, God instills compassion for both parents for their children. In the Qur'an and Hadith of the Prophet Muhammad, SAW states that children are a gift and at the same time a mandate given by Allah to their parents. Even the Koran glorifies children and likens children to world jewelry (QS. Al Kahf: 46). Children are also referred to as the younger generation, which play an important role in maintaining and passing on the ideals of a nation.

As a gift and a mandate, the child who is given must get good maintenance and care from both parents. Children have the right to protection, education, care, all of which are inherent rights of a child. Because in every child inherent rights and dignity that must be upheld as the rights and dignity that exist in every living creature (Nurhidayah, 2019).

Every child has the right to survival, growth and development and is entitled to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia.

However, in reality, children's rights, especially in Indonesia, are still being violated. Indonesia is a country that has a big commitment to the implementation of child protection. This commitment is proven in various ways, both in regulatory aspects with the passing of Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection and Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which specifically provides legal protection for children who are in conflict with the law. Institutionally in Indonesia there is the Indonesian Child Protection Commission (KPAI) which has the task of supervising the implementation of the fulfillment of children's rights and providing input and suggestions in formulating policies regarding the implementation of child protection.

We have not been able to be very consistent in upholding children's rights, even though the legal instruments are available, it is ironic indeed, if laws with regulations regarding child protection are only lip service which are almost meaningless, children grow and develop abnormally and this happens not in certain environment, but extends whenever and wherever it can occur.

One of the violations of children's rights is to get protection from all kinds of acts of violence, threats and discrimination. The conditions of violations experienced by children that occur today are not just problems that only arise in the family circle in a broken home, or occur in frustrated parents, but can occur under any circumstances. Acts of violence against children have become a social problem that requires collective attention from all components of society, because the victims of this incident are not only experienced by one or two family units or from mere expressions of deviant behavior but have penetrated geographical boundaries and communities who can befall and anywhere.

Based on data from the Ministry of Women's Empowerment and Child Protection, in 2022 there will be 21,241 children who are victims of criminal acts of violence in Indonesia. These various forms of violence are not only physical violence, but also psychological, sexual violence, neglect, trafficking in persons, to exploitation. If the data is detailed as follows; 9,588 children became victims of sexual violence, 4,162 children became victims of psychological violence and 3,746 children became victims of physical violence, 1,269 children became victims of neglect, 219 children became victims of human trafficking, 216 children became victims of exploitation and 2,041 children became victims of internal violence other forms (Pratiwi, 2023)

The occurrence of criminal acts of violence against children is a nightmare for children, which will have an impact that will last a lifetime and traumatize the child. It can even trigger negative behaviors for children, for example narcotics and psychotropic abuse, consuming alcohol/drinking to sexual deviation (Ariani & Asih, 2022).

Some examples of cases of violence against children committed by parents or closest people (family), include; Happening in 2020, a viral video circulated of a child who was fussed over because he experienced physical violence from his parents which occurred in the Pondok Gede area, Bekasi City, West Java. This happened because the child was reluctant to do his schoolwork, so his father beat him. In early 2021 through a video circulating on social media Facebook. The community was shocked by the

incident where a 4-month-old baby was given alcohol by his own uncle and this incident later became viral. In contrast to the case that occurred in 2022, in Bekasi, West Java, a 15-year-old child was found chained and starving. The child is a child with disabilities who experienced violence perpetrated by his biological father and stepmother. In February 2023 North Cimahi District, Cimahi City, West Java. The perpetrator was the biological father of the victim who had the heart to torture brothers aged 10 and 12 years because of money problems. The authorities reported that a 10-year-old victim died while his older brother suffered serious injuries. The Indonesian Child Protection Commission (KPAI) has recorded the number of cases of sexual violence against children in Indonesia from January to February 2023. During those two months, there were more than a hundred cases of sexual violence experienced by children. In 2023 violence against children based on reports submitted by the Head of the Division of Supervision, Monitoring and Evaluation of the Indonesian Child Protection Commission (KPAI) there were 119 complaints. On average, the most cases reported were acts of sexual violence against children. At most, more than 50 percent is the issue of violence against children. Both physical, psychological and sexual. The remaining cases related to violations of children's rights (Tim Redaksi, 2023).

Indeed, it is really ironic if we see several examples of cases of violence against children, it is the perpetrators who do it, namely the closest people (family) who basically have to be able to provide care, protection and guard against things that can endanger the health and life of a minor, on the contrary. can threaten the life of a person

Based on the description above, the author hereby wishes to examine more deeply about Criminal Responsibility by Parents as Actors in Crimes of Violence Against Underage Children in the Study of the Child Protection Law.

METHOD

The research method used in this paper is normative juridical research. A juridical approach based on existing laws or regulations. Normative legal research always focuses on secondary data sources (Marzuki: 2011). While the research approach conducted by researchers namely statutory approach (Statue Approach) in research normative law. Legislative Approach, namely the approach taken by reviewing all relevant laws and regulations related to the legal issues being handled (Soekanto: 2007). Secondary data in this study were obtained from primary legal materials, secondary materials and tertiary legal materials. In this study, secondary data were sourced as follows: Primary legal material sources, consisting of legislation related to the issues discussed in the study. Secondary legal material sources, consisting of books and previous research results. Tertiary sources of legal materials, consisting of articles, newspapers, magazines and others. The data analysis technique that the author uses in compiling this paper is qualitative analysis. Data analysis in this study uses qualitative analysis methods, in this case it examines in depth the existing legal materials and then combines them with other legal materials, and combines them with supporting theories and then draws general conclusions.

DISCUSSION

Legal Protection for Child Victims of Violent Crimes

According to Satjipto Raharjo legal protection is to provide protection for human rights that are harmed by other people and this protection is given to the community, so that they can enjoy all the rights granted by law (Rahadjo:2007). Legal protection, especially for children, has been carried out by the Indonesian government so far, from

a review conducted on the directory of laws and regulations that regulate and guarantee the protection of children's rights, it turns out that the efforts made in Indonesia have already had several legal products at the level of laws. Laws that provide protection for children's rights, including:

1. Implementation in the 1945 Constitution after the amendment.
2. Implementation in Human Rights Law.
3. Implementation of Child Rights and Child Protection Laws.
4. Implementation in the field of employment.
5. Implementation in the Juvenile Court Act.
6. Implementation in the Child Welfare Law.
7. Implementation in Civil / Marriage Laws.
8. Implementation in Formal and Material Criminal Law.

In Indonesia, provisions regarding child protection have been regulated clearly and in detail in the Law of the Republic of Indonesia No. 35 of 2014 changes to the Law of the Republic of Indonesia No. 23 of 2003 concerning Child Protection, in Article 1 number 2 confirms that:

"Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination, for the realization of Indonesian children who are of high quality, have noble character and prosperous(DPR RI, 2014).

Broadly speaking, this law adopts the contents of the International Convention on the Rights of the Child (United Nations Convention on The Rights of The Child) established in 1989 by the UN General Assembly. As an international agreement, this convention is open for ratification by other countries in the world. Because of its open nature, this agreement has the duty to form legal provisions (law meaking treties) for all members who ratify it (Nursamsi, 2006).

Parents, families and communities are responsible for guarding and nurturing and providing protection for children in accordance with the obligations imposed by law. Likewise, the state and government are also responsible for implementing child protection by providing facilities and accessibility for children, especially in ensuring optimal and directed growth and development.

A child must be treated humanely and given education, skills and taught noble morals, so that the child will later be responsible for socializing himself to a conducive future. The issue of child protection is expressly an obligation and responsibility to parents to look after and protect them (Waluyudi:2009).

Every legal protection given to citizens without exception is in accordance with the provisions of the laws and regulations in force in the Republic of Indonesia. All Indonesian citizens have the right to be given protection by the government, both adults and children. Even more attention is given to the protection of children because children are vulnerable to becoming victims of violence. Legal protection for children is an effort made so that every child gets rights and obligations before the law for the sake of the child's physical, mental and social growth. Legal protection for children has many benefits for parents and their children, so in the legal protection of children, cooperation needs to be held in order to prevent an imbalance in child protection activities as a whole.

Theoretically, violence against children (child abuse) can be defined as physical, mental or sexual treatment which is generally carried out by people who have responsibility for the welfare of children where all of this is indicated by losses and threats to the health and welfare of children. However, child abuse is actually not only in the form of beatings or physical assault, but can also be in the form of various forms

of exploitation through, for example pornography and sexual assault, provision of food that is not suitable for children or malnutrition, neglect of education, and health (educational and medical neglect) and medical-related violence (medical abuse) (Agung, 2019).

Children as victims of crime can suffer physical and non-physical losses. Physical losses can be in the form of disabilities, injuries and even death. Non-physical losses can be in the form of mental disturbance, or endless fear (Dwiatmodjo, 2011).

The occurrence of criminal acts of violence against children can be said to be certain circumstances, situations and conditions which can be said that children must receive special protection (Angelin N Lilua, 2016). This special protection is in the form of guaranteeing a sense of security from threats that can harm the child both physically and psychologically (Trimaya, 2015).

Special protection given to children who are victims of criminal acts of violence as emphasized in Article 59 A must make efforts (DPR RI, 2014):

- a) Prompt treatment, including treatment and/or physical, psychological and social rehabilitation as well as prevention of diseases and other health problems.
- b) Psychosocial assistance during treatment until recovery.
- c) Provision of social assistance for children who come from underprivileged families.
- d) Provision of protection and assistance in every judicial process.

Implementation of the protection of children from criminal acts of violence in Law no. 35 of 2014 concerning Child Protection, can be categorized as a child as a witness (children in conflict with the law), so that children must receive protection at every level of examination. Namely the level of investigation in the police, the level of prosecution by the prosecutor and the level of examination in court.

Criminal Responsibility by Parents as Actors in Crimes of Violence Against Children Law 35 of 2014 changes to law no. 23 of 2002 concerning Child Protection The law has determined that anyone who commits a crime of violence or threats of violence will be threatened with criminal sanctions for 5 years in prison and a fine of Rp. 100,000,000 (DPR RI, 2014).

Regarding criminal arrangements for acts of violence against children specifically regulated in Article 80 of Law no. 23 of 2002 concerning Child Protection in conjunction with Law no. 35 of 2014 which reads (DPR RI, 2014):

Everyone who commits cruelty, violence or threats of violence, or abuse of children, shall be punished with imprisonment for a maximum of 3 (three) years 6 (six) months and/or a fine of up to Rp. 72,000,000.00 (seventy two million rupiahs);

In the event that the child referred to in paragraph (1) is seriously injured, then the offender shall be subject to imprisonment for a maximum of 5 (five) years and/or a fine of up to Rp. 100,000,000.00 (one hundred million rupiahs);

In the event that the child referred to in paragraph (2) dies, the offender shall be subject to imprisonment for a maximum of 10 (ten) years and/or a fine of up to Rp. 200,000,000.00 (two hundred million rupiahs);

The penalty is added to one third of the provisions referred to in paragraph (1), paragraph (2), and paragraph (3) if the parents who committed the abuse.

Then if the crime of violence is committed in the form of a crime of sexual violence, then the Prohibition of sexual crimes in the form of obscene acts against children is regulated in Article 76E of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In Article 76E it says: "Everyone is prohibited from committing violence or threats of violence, forcing, tricking, committing a series of lies, or persuading a child to commit or allow obscene acts to be carried out. (DPR RI, 2014)"

Sanctions for perpetrators of sexual crimes in the form of obscene acts against children, perpetrators of sexual abuse of children can be subject to sanctions based on Article 82 paragraph (1) junto Article 76E Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. With criminal sanctions in the form of imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years, and a maximum fine of Rp. 5,000,000,000.- (five billion rupiah)(DPR RI, 2014).

In the event of a criminal act as referred to in Article 76D Everyone is prohibited from committing violence or threats of violence forcing a child to have intercourse with him or with another person. reproductive function and/or the victim dies, the perpetrator will be subject to death penalty, life imprisonment or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years(DPR RI, 2014).

These provisions are contained in Article 80 paragraphs (1), (2) and (3) as mentioned below:

Everyone who violates the provisions referred to in article 76C which reads(DPR RI, 2014):

1) Everyone is prohibited from placing, allowing, doing, ordering to do, or participating in violence against children. Shall be punished with imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a maximum fine of Rp. 72,000,000.00 (seventy two million rupiah).

2) In the event that the child referred to in paragraph (1) is seriously injured, the offender shall be subject to imprisonment for a maximum of 5 (five) years and/or a fine of up to Rp. 100,000,000.00 (one hundred million rupiah).

3) In the event that the child referred to in paragraph (2) dies, the offender shall be subject to imprisonment for a maximum of 15 (fifteen) years and/or a fine of up to Rp. 3,000,000,000.00 (three billion rupiahs).

So the perpetrators of violence against children can be subject to punishment on the basis of Article 81 paragraph (5) of Law Number 17 of 2016 concerning Child Protection. Article 76A of Law Number 35 of 2014 Concerning Child Protection states that everyone is prohibited from:

a) Treating children in a discriminatory manner which results in the child experiencing losses, both materially and morally, thereby hindering their social functions; or

b) Treating children with disabilities in a discriminatory manner.

Violence against children is a violation of human rights which is of serious concern to the government and all levels of society, including the international community. This is because the problem of violence against children continues to occur and cannot be resolved. Even though various legal frameworks have been issued in this country with the aim of protecting children from all forms of violence, the reality is that violence against children still occurs and tends to increase. This phenomenon indicates that the existing legal framework has not been socialized evenly, or there is a possibility that the community has not understood the meaning of violence itself, so that the awareness to protect children from all forms of violence has not received serious and maximum attention.

The issue of legal protection and children's rights is one aspect of the approach to protecting Indonesian children. Protection of children's rights must be carried out regularly, orderly and responsibly, so legal regulations are needed that are in line with the development of Indonesian society. The Government's efforts to protect children have been quite good, namely with the existence of Law no. 39 of 1999 concerning Human Rights, Law no. 3 of 1997 concerning Juvenile Justice and Law no. 35 of 2014 concerning changes to Law no. 23 of 2002 concerning Child Protection, but the expected form of protection has not been given optimally.

Dissemination of the existence of legislation relating to child protection has not been carried out thoroughly to the public even though there are also child protection institutions such as KPAI and LPA (Child Protection Agency). This causes people to not understand the contents of the law and the role of these institutions, so that people are afraid or reluctant to report acts of violence against children. So far the protection and attention given to children has focused more on a crime committed by a child, child welfare, child status, guardianship, adoption, neglected child and delinquent child.

CONCLUSION

Legal protection for children from acts of violence is guided by the provisions of laws and regulations, namely Law no. 35 of 2014 concerning Child Protection, that children as victims of criminal acts will have to be given special protection, namely in the form of protection as victims and also as witnesses.

Criminal responsibility by parents as perpetrators in criminal acts of violence against children, which is regulated in detail in Law No. 35 of 2014 concerning Child Protection including Article 80 paragraph (1), paragraph (2), (3) (4), and Article 82 paragraph (1) and (2), Article 83, Article 84, Article 85, Article 86, Article 87, Article 88, Article 89. Sanctions that can be applied include death penalty, imprisonment and fines.

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