

Imposition of Criminal Sanctions on Parents as Perpetrators of Violence Against Children

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Abstract. *Violence against children remains a serious problem in Indonesia. Based on the report from the Ministry of Women Empowerment and Child Protection in 2022, there are still 21,241 children who have fallen victim to violence. This study aims to analyze the application of criminal sanctions against parents who commit violence against their children. Using a normative juridical approach with legislative and conceptual methods, this paper examines the provisions of criminal sanctions in the Child Protection Law and their implementation in court decisions. The findings reveal that although the Child Protection Law has regulated criminal sanctions, judges tend to impose varied punishments, predominantly leaning toward minimum penalties. Analysis of three court decisions shows that the imposed sanctions have complied with the legal provisions; however, none of them applied the maximum criminal sanctions available. This lenient sentencing practice indicates a weakness in the current legal framework. This study recommends that government immediately revise the Child Protection Law by establishing more stringent and specific provisions, particularly by limiting judicial discretion in imposing minimum penalties and emphasizing the application of maximum criminal sanctions for parents who commit violence against children. Stronger and more deterrent regulations are expected to reduce cases of child violence and create a safer environment for children's growth and development in Indonesia.*

Keywords: *Children; Criminal; Protection; Sanctions; Violence.*

1. Introduction

The family holds a primary role as the closest environment influencing the development of children. The presence of the family has a significant impact on nurturing and overseeing the process of children's growth. Therefore, it is crucial for every family to provide positive and affectionate treatment towards their children. Children are not only a crucial factor for the continuity of the family's

generations but also play a significant role in shaping the future of the nation and the country.

Children, as legal subjects, still frequently fall victim to violence, as reflected in the data released by the Ministry of Women's Empowerment and Child Protection in 2022. According to this data, there were 21,241 children who experienced various forms of violence. The breakdown includes 9,588 children who fell victim to sexual violence, 4,162 who experienced psychological violence, 3,746 who became victims of physical violence, and 1,269 subjected to neglect. Furthermore, there were 219 children who became victims of human trafficking crimes, 216 who experienced exploitation, and 2,041 who became victims of various other forms of violence (Pratiwi 2022).

Article 28B of the 1945 Constitution establishes that every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination. The occurrence of violence against children represents an arbitrary act intended to harm them, thereby categorizing violence as a criminal offense. Criminal offenses involve behaviors that violate established norms set by the government, and perpetrators are subject to criminal sanctions (Andhini 2019). Ironically, those who commit criminal acts against children often come from the children's own parents, who are supposed to be their closest guardians and protectors. The latest news in the media involves a father in Jagakarsa, Jakarta, who has been cruel to his four biological children, with the motive still under investigation by the police (Hukmana 2023).

Children who fall victim to violence from their parents experience psychological repercussions, such as feelings of inferiority, excessive fear, disturbances in emotional development, and ultimately may lead to mental problems (Kusuma 2019). The occurrence of cases of violence against children by their parents and the resulting psychological impact necessitate firm action from law enforcement authorities. Therefore, this article aims to discuss the imposition of criminal sanctions against parents involved in violence against children. The objective of this article is to comprehend the application of criminal sanctions imposed by the Judge and to analyze their implementation based on the provisions of the prevailing legal regulations in Indonesia.

2. Research Methods

This writing follows the normative legal approach, focusing on the practical application of the law. The applied approach involves two main aspects: the statutory approach and the conceptual approach. The statutory approach is executed by examining relevant legal regulations pertaining to the researched issue. Meanwhile, the conceptual approach is manifested through the formulation of legal concepts derived from perspectives and doctrines that have evolved within the realm of legal science concerning the principles of the

involved legal aspects. The legal materials employed in this writing encompass both primary and secondary legal sources. Primary legal materials include Law Number 23 of 2002 concerning Child Protection, which underwent two amendments with the enactment of Law Number 35 of 2014 and Law Number 1 of 2016 (hereinafter referred to as the Child Protection Law). Meanwhile, secondary legal materials consist of relevant books and journals pertaining to the focus of this writing.

3. Results and Discussion

3.1. Regulations on Criminal Sanctions for Violence Against Children by Parents

Children, as legal subjects in Indonesia, have the right to legal protection. Furthermore, the position of children as part of the societal group places them in a vulnerable condition, necessitating familial support throughout their developmental processes. As articulated by Zulfikri and his colleagues, when a criminal act befalls a child as the victim, the threat of punishment is heightened due to the child's status as a vulnerable group, entitled to protection rather than harm (Zulfikri 2018).

Criminal sanctions constitute a form of punishment based on the cause-and-effect principle, where the cause pertains to instances of legal violations, and the effect denotes the legal consequences imposed. Individuals subject to these consequences may face sanctions, such as imprisonment or other legal measures imposed by authorities (Prisdawati 2020). The objective of imposing criminal sanctions is to rectify the behavior of offenders, aiming to attain a level of morality and conduct deemed socially acceptable. This is because criminal sanctions function as a threat that will be implemented as a consequence of legal transgressions. Substantively, criminal sanctions are directed towards restoring equilibrium within the societal framework that has been disrupted due to violations of established norms (Lumaut 2021).

According to Lilik Mulyadi's perspective within the juridical context, the definition of a child within the positive law of Indonesia generally refers to individuals who have not yet attained maturity (*minderjarig*), individuals below a certain age or in an inferior condition (*minderjarigheid*), or frequently identified as individuals under the guardianship of a custodian (*minderjarige ondervoordij*) (Susanto 2022). Meanwhile, Suharto's viewpoint, as presented in a journal authored by Alycia Sandra Dina Andhini and Ridwan Arifin, delineates violence against children into four categories: psychological violence, physical violence, social violence, and sexual violence. The elaboration on this matter can be expounded as follows (Andhini 2019):

- a. Psychological violence is an act of violence that encompasses behaviors such as the use of inappropriate language, including rough or vulgar words, as well as the

presentation of content in the form of videos, images, or books that are pornographic in nature to children.

b. Physical violence manifested in acts such as hitting, abusing, and torturing children using specific objects. These actions can result in physical injuries, even leading to the death of the child.

c. Social violence falls within the category of child neglect, wherein neglect itself can be explained as the behavior of parents who fail to provide adequate living conditions or attention during the child's developmental stages.

d. Sexual violence, among which includes acts of precontractual sexual behavior performed by adults towards children, involves actions such as touching or displaying visual images.

The Child Protection Law has established penalties for individuals perpetrating violence against children. Article 77B of the said law stipulates punishment in the form of a maximum prison sentence of 5 years and/or a maximum fine of *IDR* 100,000,000 (one hundred million Indonesian Rupiah) for those who neglect children. Meanwhile, Article 80 delineates penalties for perpetrators of violence against children. In clause (1), it sets a maximum prison sentence of 3 years and 6 months and/or a maximum fine of *IDR* 72,000,000 (seventy-two million Indonesian Rupiah). Under clause (2), if the violence results in severe injury to the child, the penalty imposed is a maximum prison sentence of 5 years and/or a maximum fine of *IDR* 100,000,000 (one hundred million Indonesian Rupiah). The severity of the punishment escalates if the child victim of violence dies, as articulated in clause (3), prescribing a maximum prison sentence of 15 years and/or a maximum fine of *IDR* 3,000,000,000 (three billion Indonesian Rupiah). Should the perpetrator of violence be the parent of the child victim, clause (4) asserts an additional threat of one-third of the punishment imposed under clauses (1) to (3).

The penalties for perpetrators of sexual violence against children who coerce them into engaging in sexual intercourse with themselves or others are regulated in Article 81 of the Child Protection Law. Several paragraphs within this article specify the types of criminal sanctions to be imposed. Paragraph (1) stipulates that perpetrators of sexual violence against children can be sentenced to a minimum of 5 (five) years and a maximum of 15 (fifteen) years in prison, along with a fine of up to *IDR* 5,000,000,000.00 (five billion Indonesian Rupiah). Paragraph (2) states that these criminal sanctions also apply to individuals who deliberately employ deception, a series of lies, or persuasive tactics to engage in sexual relations with a child, either with themselves or with others. Paragraph (3) asserts that if the perpetrator of sexual violence is a parent, guardian, caregiver, educator, or educational personnel, the criminal sanctions will be increased by one-third of the imposed sentence. Paragraph (4) regulates that the one-third addition to the

sentence (as stipulated in paragraph (3)) is also applicable to perpetrators who have previously been convicted of committing violence or threats of violence to coerce a child into engaging in sexual intercourse. Paragraph (5) specifies that if this sexual violence affects more than one victim and results in severe injury, mental disturbance, contagious diseases, disruption or loss of reproductive function, or even the death of the victim, the perpetrator can be sentenced to death, life imprisonment, or a minimum of 10 years and a maximum of 20 years in prison. Paragraph (6) introduces an additional penalty of disclosing the identity of the criminal perpetrator. Paragraph (7) explains that regarding the regulations in paragraphs (4) and (5), chemical castration or the installation of electronic detection devices may be imposed. The application of paragraph (7) will be decided concurrently with the primary penalty, with an execution period of no more than 2 years and carried out after the defendant serves the primary penalty, as outlined in paragraph (8) and Article 81A paragraph (1).

Article 82 of the Child Protection Law delineates sanctions for perpetrators of sexual violence against children involving coercion, deception, a series of lies, or persuasion towards a child to engage in or permit lewd acts. Paragraph (1) establishes criminal penalties of a minimum of 5 years and a maximum of 15 years of imprisonment, along with a fine of up to IDR 5,000,000,000,- (five billion Indonesian Rupiah). In cases of sexual violence perpetrated by parents, guardians, caregivers, educators, or educational personnel, paragraph (2) adds one-third to the specified penalty in paragraph (1). Paragraph (3) affirms that the one-third addition to the penalty also applies to perpetrators previously convicted of violence or threats of violence, coercion, deception, a series of lies, or persuasion towards a child to engage in or permit lewd acts. Paragraph (4) indicates the addition of one-third to the penalty if there are multiple victims, resulting in serious injuries, mental disorders, contagious diseases, disruptions, or loss of reproductive functions, or even the death of the victim. Paragraph (5) introduces an additional punitive measure, namely the disclosure of the perpetrator's identity, in addition to the penalties outlined in paragraphs (1) through (4). Paragraph (6) states that rehabilitation and the installation of electronic detection devices can be imposed on perpetrators as stipulated in paragraphs (2) through (4). Paragraph (7) regulates that actions as outlined in paragraph (6) will be decided concurrently with the primary penalty, with enforcement carried out during or after the convict serves the primary penalty, subject to periodic supervision by the Ministry responsible for legal, social, and health affairs, as specified in Article 82A paragraphs (1) and (2).

Article 88 of the Child Protection Law regulates the sanctions for perpetrators of exploitation and violence against children, either economically or sexually. Offenders are liable to imprisonment for a maximum of 10 years and/or a fine of up to IDR 200,000,000,- (two hundred million Indonesian Rupiah).

3.2. Examples of Criminal Sanctions Imposed on Parents Who Commit Violence Against Children

Article 1 paragraph (3) of the 1945 Constitution of Indonesia, which declares Indonesia as a state based on the rule of law, signifies the foundational existence of legal principles within the state structure. Therefore, all Indonesian citizens are required to adhere to the enforcement of the law comprehensively. This enforcement demands that all actions undertaken must adhere to the prevailing legal regulations within the territory of Indonesia.

Here is an example of a judge's ruling concerning a case of physical violence committed by a parent against his child, under case number 79/Pid.Sus/2020/PN.Tte. The defendant engaged in physical violence against his child upon arriving home and not finding his spouse present. Subsequently encountering his second child and inquiring about the whereabouts of their mother, the child's inability to provide information led to the defendant becoming angry and inflicting physical violence upon his child. This act of violence against his 12-year-old biological child resulted in abrasions on the right temple, swelling on the left jaw, at the back of the head, bruising and discoloration on the left side of the back, and swelling on the right foot. The judge ruled to sentence the defendant to a 5-month imprisonment term and mandated the defendant to pay litigation costs of *IDR* 5,000. This judicial decision is based on Article 80 paragraph (1) in conjunction with Article 76C and Article 80 paragraph (4) of the Child Protection Law.

Decision No. 49/Pid.Sus/2021/PN Son depicts the chronology of physical violence committed by the defendant against his 10-year-old child, triggered by the child accidentally spilling rice on the floor. As a result of the defendant's actions, the child sustained abrasions and several bruises due to impact with blunt objects, ultimately hindering his ability to engage in activities. In the ruling, the judge imposed a sentence of 6 years and 8 months of imprisonment and mandated the defendant to pay litigation costs amounting to *IDR* 5,000. This decision is based on the provisions of Article 80 paragraph (4) in conjunction with Article 76C of the Child Protection Law.

Decision No. 56/Pid.Sus/2023/PT TPG elaborates that the defendant slapped his child once with his bare hand, specifically the right hand, hitting the left temple. This incident was provoked by what the child uttered, which was deemed disrespectful, triggering an emotional response from the defendant. The Judge of the High Court in Kepulauan Riau declared that the defendant was proven legitimately and convincingly guilty of committing physical violence against his biological child, and imposed a sentence of 1 year and 6 months imprisonment along with a fine of *IDR* 5,000,000. Failure to pay the fine will result in a three-month imprisonment instead. Additionally, the defendant is obligated to cover the litigation costs for two court levels, with an appellate court fee of *IDR* 5,000. This

Judge's decision is based on the provisions of Article 80 paragraph (4) within the Child Protection Law.

A crime is a breach of the law that requires enforcement through imposing sanctions on the offender. The application of sanctions serves as a tool of authority to reinforce the enforcement of a norm and to prevent as well as eradicate actions that disrupt the adherence to that norm (Agustinus 2022). The implementation of criminal sanctions signifies that the perpetrator can be held accountable for their actions due to their awareness of violating legal provisions.

The imposition of criminal sanctions on perpetrators of violence against children, especially if the perpetrator is a parent, requires a judicial system committed to protecting children. The judicial system constitutes a framework designed to address criminal acts that disrupt societal order and safety. There are four institutions involved in achieving the objectives of this judicial system: the Police, Public Prosecution, Courts, and Correctional Institutions. These four institutions are expected to collaborate synergistically, despite each having its own independency (Suryadi 2020).

The opinions of M. Abdul Kholiq and Ari Wibowo as cited in Hafrida's paper, indicating that Judges tend to opt for imprisonment as a sentencing measure with the aim of ensuring justice for victims and society, as well as to deter perpetrators (special prevention) and the general public (general prevention) (Hafrida 2021). The imposition of heavier criminal sanctions by Judges demonstrates the government's commitment to providing protection to children who have become victims of violence perpetrated by their parents.

Rheza Andre Kusuma and Widodo Tresno Novianto cited Lilik Mulyadi, stating that a Judge's decision is the result of their statements during a criminal trial open to the public. It is rendered after the process and procedures of criminal procedural law, encompassing verdicts of conviction, acquittal, or dismissal of all legal claims. This decision is documented in writing with the aim of resolving the case (Kusuma 2019). The Judge's deliberation is formed based on the Prosecutor's indictment, evaluating the validity of evidence, and considering both subjective and objective requirements of the perpetrator to determine the imposition of criminal sanctions.

The purpose of imposing criminal sanctions, as articulated by Wirjono Projodikoro in an article authored by Hafrida, is to deter individuals from committing legal violations, both by reducing the tendency for general infractions (general prevention) and by preventing individuals who have already violated the law from repeating their actions in the future (specific prevention). Furthermore, the objectives of criminal sanctions encompass aspects of education or rehabilitation for perpetrators of crime, aiming to transform their behavior towards becoming productive members of society with positive character traits (Hafrida 2021). When

imposing criminal sanctions in their rulings, judges do so not solely as a form of retribution for the actions committed by the perpetrator but also as a preventive measure to discourage the repetition of offenses by the perpetrator and to deter others from emulating the same behavior.

Based on shared knowledge, primary punishments are divided into fines, imprisonment, and the death penalty. Additional penalties encompass the confiscation of specific items and the revocation of certain rights. From the three aforementioned verdicts, it is evident that the Judge imposed sentences of imprisonment and fines, particularly in the case numbered 56/Pid.Sus/2023/PT TPG. These three cases involve physical violence against children perpetrated by their parents, specifically the involvement of fathers as perpetrators against their offspring.

Three different judges in those three verdicts based their decisions on Article 80 of the Child Protection Law. It is regrettable that in those three instances, the judges did not impose the maximum criminal sanctions. This can be understood because the Child Protection Law regulates the range of criminal sanctions from the minimum to the maximum, allowing leeway for judges to impose lower penalties, especially when the perpetrator commits their first offense of violence against a child.

This has become a gap leading to the increasing number of child violence cases due to the imposition of minimal prison sentences. Therefore, it is crucial to revise the Child Protection Law with provisions that govern stringent imprisonment penalties, setting a maximum limit without a minimum threshold. The implementation of maximum criminal sanctions in judicial rulings could reflect the government's commitment to addressing cases of violence against children.

Imposing the maximum criminal sanctions demonstrates a serious commitment to providing protection to children, particularly those who fall victim to violence perpetrated by their own parents. The hope is that through the imposition of these maximum penalties, the perpetrator becomes aware not to repeat their actions, and others refrain from attempting to emulate such behavior. This enables Indonesian children to grow and develop in a supportive family environment, free from all forms of violence.

4. Conclusion

Based on the above exposition, it can be concluded that The Child Protection Law has provided criminal sanctions for perpetrators of violence against children, especially when committed by parents, by imposing an additional penalty of one-third of the primary penalty. The arrangement of criminal sanctions within the Child Protection Law still allows judges not to impose maximum sentences. This is due to the provisions within the Child Protection Law that provide a range of

imprisonment penalties from minimum to maximum. The imposition of prison sentences aims to deter perpetrators from repeating their actions and prevent others from emulating similar behavior. However, if not applied to the maximum extent, there is concern that perpetrators might repeat their actions and others might replicate similar behaviors, thereby failing to reduce the incidence of violence against children. There is a need for serious government commitment to revise the Child Protection Law by setting maximum criminal sanctions without providing a minimum range, in order to prevent cases of violence against children perpetrated by their parents.

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