

Policy on the Application of Criminal Sanctions to Perpetrators of Crimes of Violence Against Children

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Abstract. *The purpose of this research is to know and analyze the legal process regarding acts of violence against children related to applicable regulations. To know and analyze the policy of implementing criminal sanctions against perpetrators of criminal acts of violence against children. The method used by the researcher is normative legal approach. The specifications in this study include a description of the analysis. The sources and types of data in this study are secondary data obtained from literature studies. Based on the results of the study, the Legal Process Regarding Violence Against Children Related to Applicable Regulations is starting from the investigation process, prosecution, trial to the verdict stage has been running well, this is proven from year to year the number of perpetrators of violence reported to the authorities have been processed in accordance with existing regulations. The Policy on the Application of Criminal Sanctions Against Perpetrators of Violence Against Children has been regulated in Article 80 of Law Number 35 of 2014. This is supported by the granting of great authority to law enforcement officers who are metaphorically institutions authorized to raise awareness to the public, the process of examining perpetrators starting from the investigation level at the Police, the prosecution level by the Public Prosecutor handling the case and up to the examination in court. Through various policies, overcoming violent crimes in Indonesia. The existence of law enforcement can be said to be effective with the speed of the handling process, but it is necessary to conduct socialization to the community regarding law enforcement regarding Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection that committing a crime of physical violence against children has very severe legal consequences, and has a very big impact on the child, hindering the development of the child, which should be guarded and protected. instilling good religious values to the community so that these values can be embedded in a person so as not to commit any type of crime so as not to hurt fellow human beings.*

Keywords: *Criminal; Implementation; Policy.*

1. Introduction

In the life of the nation and state, security is a determining factor in the life of the nation and state, the implementation of sovereign and authoritative government, which is the main supporting condition for the realization of a just, prosperous, prosperous and civilized life of a civil society system based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Domestically, the Indonesian National Police enforces law through the process of investigating and investigating criminal acts as regulated in Law Number 2 of 2002 concerning the Indonesian National Police.¹

A child is essentially a gift from God Almighty, in which there is a valuable dignity and worth as a human being and also as an adult. Children are physically and psychologically different from adults. Although they have minds to think, children's reasoning power is generally more unstable than adults. Children rarely think about the negative impacts of doing something. In general, it is easy for children to be influenced by life in their surroundings. Without realizing it, children easily enter a bad environment. In a bad environment, children can follow the behavior of the people in the environment and eventually fall into crime or criminal acts.²

The application of criminal sanctions against perpetrators of criminal acts or crimes is one of the efforts to uphold justice. In upholding justice in Indonesia, legal protection is needed for both perpetrators of criminal acts and victims. Criminal acts are often committed by adults to children or teenagers who live in society. Criminal acts that are often committed by

Arif Gosita argues that child protection is an effort to protect children so that they can exercise their rights and obligations. Protection of children's rights is essentially directly related to the regulation in laws and regulations. Policies, efforts and activities that guarantee the realization of the protection of children's rights are first and foremost based on the consideration that children are a vulnerable and highly dependent group, in addition to the existence of groups of children who experience obstacles in their growth and development, both spiritually, physically and socially.³

¹Ni Made Srintri, Umar Ma'ruf, Progressivity Of Criminal Handling Fraud And Disease By The Directorate Of The General Criminal Investigation Of Central Java Regional Police (POLDA), *Journal of Legal Sovereignty* Volume 3 Issue 1, March 2020 ISSN: 2614-560X

²Wahyu Ismail, Jawade Hafidz and Denny Suwondo, 2022, The Process of Investigation on Child Criminal Theft Committed Under Diversion, *Law Development Journal* Volume 4 Issue 2. p. 273 <http://jurnal.unissula.ac.id/index.php/ldj/article/download/21419/7126>

³Arif Gosita, 2009, *Child Protection Issues*, Pressindo Academy, Pressindo Academy, Jakarta, p. 52.

Crimes or criminal acts can basically happen to anyone and can also be committed by anyone, be it men, women or children. Children are very vulnerable or prone to becoming victims of physical violence where children are very weak humans and still need protection from the adults around them. Children are the heirs and successors of the future of a nation. Protection of children is an effort to create conditions to protect children to be able to exercise their rights and obligations. Protecting children is protecting humans as a whole.⁴

The theory of legal culture explains that law is basically not just a black and white formulation as stated in various forms of legislation, but law should be seen as a phenomenon that can be observed in the life of society through the behavioral patterns of its citizens.⁵ In general, it can be said that legal protection includes activities that are direct and indirect from actions that endanger children physically and/or psychologically. In the process of legal protection for child victims of sexual abuse, the principle of justice for children is emphasized. That is, justice in every child's case must reflect a sense of justice for the child. In addition, it is also necessary to consider the best interests of the child, namely that all decision-making must always consider the survival and development of the child.⁶

In the Criminal Code (KUHP), provisions regarding criminal sanctions against perpetrators of sexual violence have actually been regulated, but in reality this crime still occurs in many places and is hidden in society. It is not uncommon for these cases to escape the clutches of applicable law, some even stop at the level of examination by the police or prosecutor's office so that they do not reach the court process. To realize the success of law enforcement in eradicating the rampant cases of sexual violence, it is very necessary to strengthen serious coordination of cooperation between the police, prosecutors and judges in court. The verdicts of judges examining cases of sexual violence in various courts vary. There are even cases of sexual violence against minors who are only sentenced to playing around with a six-month prison sentence. This can be justified because within the maximum and minimum limits (one day to twelve years) the judge is free to get the right sentence).⁷

⁴ Kurniasari, Z., & Amarda, RT (2022). The Effect of On Time Performance on Ticket Buying Interest by Garuda Indonesia Airline Consumers at Komodo Airport. *Guava Air: Journal of Accounting Management Business and International Research*, 1(1), pp. 22–30

⁵Ishaq, 2008, *Basics of Legal Science*, Sinar Grafika, Jakarta, p. 10

⁶Kismanto, Anis Mashdurohatun, 2017, *Legal Justice for Children Victims of Criminal Sexual Violence in Kendal Regency*, *Khaira Ummah Law Journal* Vol. 12.No. 1

⁷M. Sholeh, Sri Endah Wahyuningsih, 2017, *Analysis of the Implementation of Criminal Sanctions Against Perpetrators of Sexual Violence Against Minors in the Demak District Court* *Khaira Ummah Law Journal* Vol. 12. No. 2 June 2017

Violence against children is generally committed by people who have close relationships or have known the victim first. Violence against children can be triggered by a lack of good family function or economic background. Children can become victims or perpetrators of violence with 3 (three) loci or places of violence against children, namely in the family environment, in the school environment or in the community environment. The family should be a place where children feel safe and provide protection for children. Physical violence that is rampant against children in the family, school and community environments shows that children are vulnerable to becoming victims of violence and there is minimal protection for children. Children really need a friendly and safe environment for a place to play and express themselves to develop themselves, but this shows that there is still a long way to go for a friendly and safe environment for children.⁸

Based on the problems above, the objectives of this study are as follows: to find out and analyze the legal process regarding acts of violence against children related to applicable regulations. To find out and analyze the policy of implementing criminal sanctions against perpetrators of criminal acts of violence against children.

2. Research methods

The method used by the researcher is normative legal approach and the specifications in this study include a description of the analysis. the sources and types of data in this study are secondary data obtained from literature studies.

3. Results and Discussion

3.1 Legal Process Regarding Violence Against Children Related to Applicable Regulations

For a child's life, childhood is generally considered endless, childhood development goes through several stages that of course must continue to receive attention from various parties, especially parents. The future of the nation and state in the future is in your hands now. Children are the center of attention and hope of parents. Children will also be the heirs of this nation. In fact, he must be protected and loved. But the truth says otherwise. The rampant cases of violence against children in recent years seem to overturn the assumption that children need protection. Therefore, many children are currently victims of violence from parents, the environment and society.

The development of law in Indonesia itself is very dynamic and always changing following the development of society, the development of law

⁸ Abdul, K., Salahudin, & Wawan, M. 2022. Efforts of Village Heads to Improve the Performance of Village Apparatus in Renda Village, Woha District, Bima Regency. Aurelia: Indonesian Journal of Research and Community Service, 1(1), pp. 79–87.

especially in the development of criminal (material) and criminal procedure law (formal) outside the territory of Indonesia KUHP (Criminal Code Book) and the Criminal Procedure Code (Indonesian Language Book of Criminal Procedure Law) which are currently in effect. This is because the basic rules of the Criminal Procedure Code (material) of the Criminal Code and the Criminal Procedure Code (formal) of the Criminal Procedure Code which are old legal products that have not been updated or revised, only revisions / material tests of articles in both laws and regulations do not replace / revise the entire Criminal Code or Criminal Procedure Code.⁹

Child protection is an effort and activity of all levels of society in their respective positions and roles, who are fully aware of the importance of children for the nation and state in the future. If they have matured in mental, physical and social growth, then it is time to replace the previous generation.¹⁰

Based on the Child Protection Law, it can be reflected that all actions against children that cause physical or psychological misery are classified as prohibited forms of violence. The form of violence against children - both physical violence and psychological violence - is an act that is against positive law and must be punished.

Violence against children that occurs is often considered to be the cause of children becoming unwilling to accept the truth and tending to fight back due to their boredom and anger.¹¹ So according to the positivist understanding, a child should have the widest possible freedom to express what he wants and what he understands as his rights. However, from the positive impacts stated above, the researcher sees that positive law has not been completed in discussing the body of the Child Protection Law.

Terry E Lawson classifies violence against children into 4 forms, namely: emotional abuse, verbal abuse, physical abuse, and sexual abuse. Furthermore, according to Suharto, violence against children can be grouped into:¹²

1. *pphysical abuse*(physical violence);

namely torture, beatings and abuse of children, with or without using certain objects, which cause physical injury or death to the child.

2. *pppsychological abuse*(psychological violence);

⁹Moch. Isa Nazarudin, Umar Ma'ruf, 2020, Comparison Of The Implementation Of Pre-Court Process Before And After The Constitutional Court Decision Number: 21 / PUU-XII / 2014 In The Batang, Jurnal Sovereign Law Volume 3 Issue 1,

¹⁰Maidin Gultom, 2008, Legal Protection for Children, Refika Aditama, Bandung, p. 33

¹¹Syauqi Muhammad Yusuf, 2014, As Beautiful as Heavenly Life: Household Management According to Islamic Guidance, Mitra Pustaka, Yogyakarta, p. 39

¹²Abu Huraerah, 2012, Violence Against Children, Nuansa Cendekia, Bandung, pp. 47-48

namely, scolding, using harsh and dirty words, showing pornographic books, pictures and films to children.

3. *sosexual abuse*(sexual violence); and

namely pre-sexual contact treatment between children and older people, through words, touch, visual images, exhibitionism, or direct sexual contact treatment between children and adults (incest, rape, and sexual exploitation).

4. *social abuse*(social violence);

namely including child neglect and child exploitation. Child neglect is the attitude and treatment of parents who do not provide proper attention to the child's growth and development process. For example: children are isolated, alienated from the family, or not given proper education and health care. While child exploitation shows a discriminatory attitude or arbitrary treatment of children carried out by families or society.

The legal process regarding acts of violence against children related to applicable regulations is starting from the investigation process, prosecution, trial to the verdict stage, which has been running well, this is proven from year to year the number of perpetrators of violence reported to the authorities have been processed in accordance with existing regulations.

3.2 Policy on the Application of Criminal Sanctions to Perpetrators of Crimes of Violence Against Children

MAccording to Sunaryati Hartono in her book entitled "Legal Politics Towards a National Legal System", law as a tool states that in practice legal politics is a tool or means and steps that can be used by the government to create a national legal system that can be used to achieve the nation's ideals and state goals.¹³ Legal policy is a legal policy or official policy line regarding laws that will be enforced either by creating new laws or by replacing old laws in order to achieve state goals.¹⁴

The policies that have been recommended to be chosen by policy makers are not a guarantee that the policies will be successful in their implementation. There are many variables that affect the success of policy implementation, both individual and group or institutional.¹⁵ This aims to relate to the support or demands that must be processed by the political system through various decisions and public services provided by the government in order to produce welfare for the people. In this perspective, the effectiveness of the political system is its ability to create welfare for the

¹³ Satjipto Rahardjo, 1991, *Legal Science*, 3rd Edition, Citra Aditya Bakti, Bandung, pp. 352-353

¹⁴ Mahfud MD, 2012, *Legal Politics in Indonesia*, PT. RajaGrafindo Persada, Jakarta, p. 1

¹⁵ AG. Subarsono, 2015, *Public Policy Analysis Concepts, Theories and Applications*, Pustaka Pelajar, Yogyakarta, p. 87

people.¹⁶

Action violence committed against children is a focus of problems that arise in society today. However, many people do not realize that violence against children is often committed by people close to and around them, both consciously and unconsciously. Violence against children themselves can result in psychological trauma, physical injuries and even death, which is the definition of violence in accordance with the contents of Law Number 17 of 2016. Through Law Number 17 of 2016 concerning Child Protection, which explains that the definition of violence is a criminal act that can result in injuries, loss of limbs or loss of function of limbs that are expected to recover perfectly using no small amount of force or energy.

Violent acts that occur in the community are increasingly disturbing. In resolving a conflict or problem accompanied by violent acts. In general, violent acts can be interpreted as the deliberate use of physical force or power, threats or actual violence against oneself, others, or against groups or communities, which result in injury or are likely to injure, kill, endanger the psyche, abnormal growth or loss. The forms of violence are diverse, including physical violence, verbal violence, psychological violence, economic violence, symbolic violence and neglect. Violence can be carried out by individuals or groups, haphazardly (in urgent conditions) or organized.¹⁷

The sanctions contained in the child protection law vary, for example, if someone discriminates and neglects a child resulting in loss/suffering, they will be subject to a five-year prison sentence and/or a fine of 100 million rupiah (article 77). Meanwhile, if someone commits violence and cruelty and threatens violence or abuse, they will be subject to a prison sentence of 3-10 years and/or a fine of 72-200 million rupiah. If the abuse is committed by the parent, the sentence is increased by 1/3 (article 80). Furthermore, if someone commits sexual intercourse and/or molestation of a child, they will be subject to a prison sentence of 3-15 years and/or a fine of 60-300 million rupiah (articles 81 and 82), as well as several other regulations.

Protection towards children is a must, because the role of children as the younger generation is important for the future of the family, society and country. In addition, the presence of children in this life is a guarantee for the survival and existence of the nation and state which is also stated in point (c) of Law Number 23 of 2002 concerning Child Protection. Therefore, the future of children is an obligation for us to guard and care for them well

¹⁶ Yaya Mulyana Aziz & Syarief Hidayat, 2016, Dynamics of the Indonesian Political System, Pustaka Setia, Bandung, p. v

¹⁷ Aan Hardiansyah, Akhmad Khisni, Jawade Hafidz, Violent Crimes in the Teaching and Learning Process Reviewed from the Perspective of Criminal Law and Law Number 14 of 2005 Concerning Teachers and Lecturers, Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X, Unissula

without violence in order to continue the ideals of the struggle of the nation and state in the future.

The Policy on the Implementation of Criminal Sanctions Against Perpetrators of Violence Against Children has been regulated in Article 80 of Law Number 35 of 2014. This is supported by the granting of great authority to law enforcement officers who are metaphorically institutions that are authorized to raise awareness in the community, the process of examining perpetrators starting from the investigation level in the Police, the prosecution level by the Public Prosecutor who handles the case and up to the examination in court. Through various policies, overcoming violent crimes in Indonesia. The existence of law enforcement can be said to be effective with the speed of the handling process, but it is necessary to conduct socialization to the community regarding law enforcement regarding Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection that committing a crime of physical violence against children has very severe legal consequences, and has a very big influence on the child, inhibiting the development of the child, who should be guarded and protected. instilling good religious values in society so that these values can be embedded in a person so as not to commit any type of crime so as not to hurt fellow human beings.

4. Concluding

The Legal Process Regarding Violence Against Children Related to Applicable Regulations is starting from the investigation process, prosecution, trial to the verdict stage has been running well, this is proven from year to year the number of perpetrators of violence reported to the authorities have been processed in accordance with existing regulations. The Policy on the Application of Criminal Sanctions Against Perpetrators of Violence Against Children has been regulated in Article 80 of Law Number 35 of 2014. This is supported by the granting of great authority to law enforcement officers who are metaphorically institutions authorized to raise awareness to the public, the process of examining perpetrators starting from the investigation level at the Police, the prosecution level by the Public Prosecutor handling the case and up to the examination in court. Through various policies, overcoming violent crimes in Indonesia. The existence of law enforcement can be said to be effective with the speed of the handling process, but it is necessary to conduct socialization to the community regarding law enforcement regarding Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection that committing criminal acts of physical violence against children has very severe legal consequences, and has a very big impact on the child, hindering the development of the child, which should be guarded and protected. instilling good religious values in society so that these values can be embedded in a person so as not to commit any type of crime so as not to hurt fellow human

beings The suggestion that can be conveyed in this article is that the government is expected in this case through its authorized tools, namely the police, prosecutors, judges, and lawyers to be more active in efforts to prevent and eradicate all forms of crime/violence, especially against children. It is expected that the role of the community will greatly determine the success of upholding justice for children who have become victims of violence both in the internal and external environment. Therefore, socialization of the child protection law is carried out comprehensively so that everyone knows about it, and ultimately has a high legal awareness.

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