

# PROTECTION OF CHILDREN AS VICTIMS OF CRIMINAL ABUSE

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## ABSTRACT

*Acts of violence against children are not only carried out by parents but other close people around the child. Brother, older brother, grandfather, grandmother, or other family member. The formulation of the problem that will be discussed is based on the explanation of the background of the problem above, namely what is the legal regulation regarding the crime of child abuse, and what is the legal protection regarding the crime of child abuse. This research method uses normative legal research methods. To analyze the legal materials that have been collected, several analytical techniques are used, namely, description techniques, grammatical interpretation, evaluation, and argumentation. The conclusion of this research is that the Child Abuse Legal Clause is contained in Article 80 of Law Number 35 of 2014 and provides sanctions against perpetrators of crimes against children. Then legal protection for criminal acts of child abuse is regulated in Article 5 of Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the protection of Witnesses and Victims and Article 90 paragraph (1) of Law Number 11 of 2006 2012 concerning the Juvenile Criminal Justice System.*

*Keywords: Legal Protection, Violence, Children.*

### 1. Introduction

Children are something that cannot be separated from human life and the continuity of the founding of a nation and state (Gusti et al., 2018). In a book written by John Gray entitled *Children are from Heaven*, it explains that good and innocent children are born (Nyoman et al., 2018). Every child needs to get the widest possible opportunities to grow and develop optimally. Protection efforts are needed to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment. Indonesia is a country that highly upholds the values of human rights, especially the rights of children.

In reality, the state is still unable to fulfill children's rights. One of the problems that currently occurs is sexual crimes against children. We cannot deny that Indonesia is a country that is prone to crimes against children. Various cases of crimes against children sometimes appear on Indonesian daily news. One of the highest crimes is sexual crime.

A family is a group of people within a smaller scope who are related to each other by blood through marriage or other ties, living together as a unit led by a head of the family. The family is a place of protection for its members. Fostering and guiding its members towards a better path is the function of the family. Providing happiness and pleasure in life is also part of the family's function.

The level of crime is usually related to societal and individual illnesses such as poverty, poor housing, shabby areas, careless families, mental breakdown, weak thinking power and damaged morals. However, the tendency for crime to occur does not only occur in people at a low economic level but also at people at a high economic level (Momon Martasaputra, 1973, p. 114). An act committed by a person must meet the requirements in order to be declared a criminal incident (Abdoel Djamali, 2013, p. 175).

Acts of violence against children at home are committed by people, family or people around the child. The reasons for acts of violence are carried out because there is

a child's behavior that annoys the parents, so that parents easily hit their children physically and utter verbal words that hurt feelings. Acts of violence from parents towards children are very easy to do when parents are facing problems and lack can control his emotions well. The consequences of physical and psychological beatings on children will have negative impacts, both physically related, in the form of wounds, bruises, bleeding on body parts, torture, lifelong disability and can even cause death to children. Verbal violence against children can take the form of insults, threats, insults, and words that hurt the child's feelings. Acts of violence against children are not only carried out by parents but other close people around the child. Brother, older brother, grandfather, grandmother, or other family member. Children are very easy and vulnerable to violence. Because basically children often make mistakes and sometimes irritate their parents and family.

In general, society considers domestic violence against children to be a family's "kitchen" matter. Parents also, quite a few, think that their children are their property and responsibility so that they have the right to do anything, including slamming them because they are upset because they caused the child to die or in the name of educating, nurturing and carrying out their duties as parents, the child is legally punished. beaten, scolded, pinched, pinched and even tortured. Since childhood, children have been taught to obey and obey their parents through violence. Parents in applying discipline to children often do not pay attention to the child's existence as a human being. Children are often shackled by parents' rules that are irrational and do not respect the existence of children with all their rights, such as the child's right to play. The social hierarchy taught is an authoritarian, arbitrary hierarchy. Not only in villages, but also in cities, this still happens a lot.

The formulation of the problem that will be discussed is based on the background explanation of the problem above, namely:

1. What are the legal regulations regarding the crime of child abuse?
2. What is the legal protection regarding the crime of child abuse?

## **2. Research methods**

This research method uses normative legal research methods. Normative legal research is based on legal materials from several literatures which is a process for obtaining legal rules, legal principles and doctrines to answer the legal issues faced. Using a type of legislative approach and analysis of legal concepts. Using primary, secondary and tertiary legal materials. The legal material collection technique used is a document study technique, namely by searching for materials in books and data analysis is carried out using qualitative techniques. The approach used in this research is the statutory approach. The statutory regulatory approach is an approach that uses legislation and regulations (Peter Mahmud Marzuki, 2007, p. 97). In this research, a legislative approach was carried out by examining the Criminal Code (KUHP).

Starting from the existing problem approach, in this research there are legal materials consisting of: 1) Primary legal materials, namely in the form of applicable laws and regulations related to the issues raised. 2) Secondary legal materials, namely materials that provide explanations of primary legal materials, such as draft laws, legal books, research results, expert opinions, and legal journals, and 3) Tertiary legal materials, in this research The secondary legal material used is the Big Indonesian Dictionary.

Literature studies are carried out by reviewing and researching library data such as primary legal materials and secondary legal materials. It is necessary to record the materials found in this literature study carefully and clearly, this recording is also carried out thoroughly on materials that are relevant to the research (Bambang Waluyo, 2009, p. 50).

To analyze the legal materials that have been collected, several analytical techniques are used, namely: 1) Description technique, by using this technique the researcher describes as it is a condition or position and legal or non-legal propositions, 2) Interpretation technique in the form of the use of types of interpretation in legal science such as analogies and grammatical interpretation, 3) Evaluation techniques are assessments in the form of appropriate or incorrect, agree or disagree, right or wrong, valid or invalid by researchers regarding a statement of the formulation of norms, decisions, good which are stated in primary materials and secondary legal materials, and 4)

Argumentation techniques in the form of statements originating from the author's thoughts or analysis expressed in written form.

### **3. Results and Discussion**

#### **3.1. Legal Regulations Regarding the Crime of Child Abuse**

Victims of criminal acts are weak in legal protection, since the victim reports a criminal act and indicates who the perpetrator of the crime is and/or by handing over evidence and it is found at the scene. The verdict includes both physical and non-physical suffering as well as material and non-material losses to law enforcement officials. If the victim has reported this, the victim does not have access to a photocopy of the police report archive. Minutes of examination of victims/reporters and witnesses, investigation warrants, prosecution warrants, decision files handed over to the public prosecutor, handing over of suspects and evidence to the public prosecutor, handing over indictments to the district court, criminal charges and charges and court decisions especially to obtain compensation for the suffering and losses suffered by the victim until it has permanent legal force (Abdussalam, 2010, p. 36).

According to Lilik Mulyadi, from a juridical aspect, the definition of a child in the eyes of Indonesian positive law is defined as a person who is not yet an adult, a person under age or under age, or often also referred to as a child under the supervision of a guardian (Adelina et al., 2018). The rise in cases of violence against children over the past few years seems to have reversed the opinion that children need to be protected. Nowadays, so many children are victims of family, environmental and community violence. This is truly ironic. Understanding, awareness and faith that children are the buds, potential and successors of the young generation to the ideals of the nation's struggle, have a strategic role, special characteristics and characteristics so they must be protected from all forms of inhumane treatment that result in human rights violations (Mas Aryani, 2016). Article 28b paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that;

"Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination."

Violence is often carried out in conjunction with one form of criminal act, acts of violence can be carried out with violence or threats of violence carried out or what tools are used, each depending on the case that arises. This act can happen to anyone, both men and women, from children to adults, especially if the violence occurs within the scope of the household, often this act of violence is called a hidden crime. It is called that, because both the perpetrator and the the victim tries to keep the act secret from public view, sometimes also called domestic violence (Moerti Hadiati Soeroso, 2010, p. 1).

The types of violence according to Johan Galtung (in) are direct violence, namely violence that uses physical or verbal means, structural violence, namely violence carried out by an existing structure, and cultural violence, namely violence that is formed through culture (Helena Lohy & Pribadi, 2021).

There is a lot of violence experienced by children, especially those under 18 years of age at this time. Most of these cases are abuses carried out collectively or in groups. This happens because many children have a play group with several friends which over time the group becomes a gang. In this gang, fights often occur between other gangs or they don't even hesitate to abuse individuals. Of course, this abuse resulted in victims. There are many factors that give rise to an act of abuse, for example grudges between groups of children, personal grudges, trivial problems, and many others.

Many of the victims choose legal channels to resolve this problem in the hope of getting justice and providing a deterrent effect or lesson for the perpetrators of the abuse. But there are quite a few who choose to remain silent and remain silent because they don't want to prolong the problem. Even though there is already a Child Protection Law which regulates every criminal act committed by and/or against children. It also regulates legal protection for victims of violence.

Every person who cares for children must pay attention to and carry out their obligations, which are the rights of their pet children. Article 2 Law no. 4 of 1979 concerning Child Welfare determines that children's rights are in the form of: welfare, care, upbringing, guidance, services to develop their abilities and social life, maintenance and protection from the environment both during the womb and after birth, protection from the

environment which can be dangerous its growth and development (Maidin Gultom, 2014, p. 2).

Article 15 of Law Number 35 of 2014 stipulates that every child has the right to obtain protection from: a. Abuse in political activities

- a. Involvement in armed conflict
- b. Involvement in social unrest
- c. Involvement in events containing elements of violence
- d. Involvement in war, and
- e. Sexual crimes

In Article 2 of Law no. 4 of 1979 concerning Child Welfare, it is stated that:

1. Children have the right to welfare, care, upbringing and guidance based on love, both within their families and in special care to grow and develop naturally.
2. Children have the right to services to develop their abilities and social life, in accordance with the nation's culture and personality, to become good and useful citizens.
3. Children have the right to care and protection, both during pregnancy and after birth.
4. Children have the right to protection from the environment which can harm or inhibit normal growth and development.

The Child Protection Law mentions the protection of children, but in its application there are differences in the protection of children who are victims of criminal acts in cases of abuse.

The Child Abuse Law clause is contained in Article 80 of Law Number 35 of 2014 and provides sanctions for perpetrators of criminal acts against children. Anyone who violates the provisions of Article 76C will be punished with a maximum imprisonment of 3 years in prison. If the child as referred to in paragraph (1) is seriously injured, the perpetrator will be punished with a maximum imprisonment of 5 years. If the child as referred to in paragraph (2) dies, the perpetrator will be punished with a maximum imprisonment of 15 years. If the perpetrator is a parent, one third of the provisions of paragraphs (1), (2) and (3) are added to the sentence.

### **3.2. Legal Protection Regarding the Criminal Act of Child Abuse**

Violence against children is not something new, in fact if we look deeper there are still many cases that have not been reported so that crimes against children in the household can also be said to be hidden crimes (Mulyani & Gorda, 2021). In general, victims are individuals or groups who suffer physically, mentally and socially due to criminal acts. According to Arief Gosita, victims are those who suffer physically and spiritually as a result of the actions of other people who seek to fulfill their own or other people's interests which conflict with the interests of the human rights of those who are harmed (Arief Gosita, 1993, p. 63).

Theoretically, forms of protection for victims can be carried out in various ways by looking at the form of loss or suffering suffered by the victim. Therefore, referring to several crime cases that have occurred, there are several forms of protection for victims that are commonly provided, including the following:

1. Providing Restitution and Compensation

In the explanation of article 35 of Law no. 26 of 2000 provides the definition of compensation, namely, compensation given by the State because the perpetrator is unable to provide full compensation for the losses that are his responsibility.

Meanwhile, restitution is compensation for losses given to the victim or their family by the perpetrator or a third party. Restitution may change:

- a. Return of property
- b. Payment of compensation for loss or suffering; or
- c. Reimbursement of costs for certain actions.

2. Counseling

Providing counseling assistance is very suitable for victims of crimes that cause long-term trauma, such as crimes against morality.

3. Medical services or assistance

Given to victims who suffer medical losses as a result of a crime. The medical services or assistance provided can be in the form of a medical examination and a written report (visum or medical certificate which has the same legal force as evidence).

4. Legal Aid

Legal aid is a form of assistance to crime victims. In Indonesia, this assistance is mostly given to Non-Governmental Organizations (NGOs).

5. Providing Information

Providing information to victims or their families related to the process of investigating and examining criminal acts experienced by victims (Dikdik M. Arief Mansur & Elisatris Gultom, 2006, p. 166).

Article 1 number 3 of Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the protection of Witnesses and Victims states that a victim is someone who experiences physical, mental suffering and/or economic loss resulting from an act. criminal. The provisions of Article 5 of this Law determine that witnesses and victims have similar rights:

- a. Obtain protection for personal security, family and property, and be free from threats related to testimony that will be, is being, or has been given;
- b. Participate in the process of selecting and determining forms of security protection and support;
- c. Provide information without pressure;
- d. Get a translator;
- e. Free from ensnaring questions;
- f. Obtain information regarding case developments;
- g. Obtain information regarding court decisions;
- h. Obtain information in the event that the convict is released;
- i. Identity kept secret;
- j. Get a new identity;
- k. Get temporary residence;
- l. Get a new residence;
- m. Obtain reimbursement for transportation costs according to needs;
- n. Obtain legal advice;
- o. Obtain temporary living expenses assistance until the protection period expires; and/or
- p. Get assistance.

Article 90 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains that Child Victims and Child Witnesses have the right to medical rehabilitation and social rehabilitation efforts, both within the Institution and outside the Institution. Apart from these rights, there are several rights of children as victims to receive media assistance and psycho-social rehabilitation assistance.

**4. Conclusion**

1. The Child Abuse Law clause is contained in Article 80 of Law Number 35 of 2014 and provides sanctions for perpetrators of criminal acts against children. Anyone who violates the provisions of Article 76C will be punished with a maximum imprisonment of 3 years in prison. If the child as referred to in paragraph (1) is seriously injured, the perpetrator will be punished with a maximum imprisonment of 5 years. If the child as referred to in paragraph (2) dies, the perpetrator will be punished with a maximum imprisonment of 15 years. If the perpetrator is a parent, one third of the provisions of paragraphs (1), (2) and (3) are added to the sentence.
2. Legal protection for criminal acts of child abuse is regulated in Article 5 of Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the protection of Witnesses and Victims. Then Article 90 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains that Child Victims and Child Witnesses have the right to medical rehabilitation and social rehabilitation efforts, both within the Institution and outside the Institution. Apart from these rights, there are several rights of children as victims to receive media assistance and psycho-social rehabilitation assistance

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