

## The Implementation of Child Violence Law which Caused the Fatal Death

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### Abstract.

*The purpose of this study is to determine and analyze the application of the law on child abuse that causes death with child perpetrators. The approach method used in this research is sociological juridical, emphasizing research that aims to obtain legal knowledge empirically by going directly to the object. Violence committed by minors resulting in the loss of a person's life must be enforced by law in accordance with its handling. The disappearance of life for the purpose of a crime, whether intentional or unintentional, cannot be justified by law. Law enforcement is a form of effort in creating justice for perpetrators and victims. The results of the study did not find anything that could eliminate criminal liability, either as a justification or excuse for forgiveness, so the child must be held accountable for his actions by being sentenced to imprisonment for 3 (three) years and 6 (six) months at the Child Special Guidance Institution (LPKA). Class I Kutoarjo.*

*Keywords: Application; Children; Death; Violence.*

### 1. Introduction

In the article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "every child has the right to survival, growth and development and the right to protection from violence and discrimination."<sup>1</sup> Because providing protection for children will never stop throughout life. Children are the next generation of the nation who are prepared as objects of implementing sustainable development as well as controlling the future of a country.<sup>2</sup>

The unlawful acts committed by children are caused by various factors, namely the negative impact experienced by children along with advances in information technology, the flow of globalization which is so quickly accepted by children. So that it causes changes in attitudes, children's behavior that leads to social changes in people's lives that affect the values and attitudes of children.<sup>3</sup> In addition, there are environmental factors from within the family itself. All will have an impact on the development of children who are less mature in living life, so that children commit crimes that are detrimental to society with disgraceful behavior.<sup>4</sup> The behavior of children who commit criminal acts also requires legal protection as a way to protect the nation's future generations, legal protection for children concerns

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<sup>1</sup>Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia

<sup>2</sup> Fiska Ananda. Penerapan Diversi Sebagai Upaya Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana. *Jurnal Daulat Hukum Vol. 1. No. 1 March (2018)*. Url : <http://jurnal.unissula.ac.id/index.php/Rh/Article/View/2566/1923> Accessed on 21 March 2022.

<sup>3</sup> Himawan Aji Angga and Ira Alia Maerani. Parent Responsibility Towards Criminal Actions Of Traffic Accident By Children Which Sustained Others Death. *Law Development Journal Volume 2 No 3, September (2020)*. P.265. URL : <http://jurnal.unissula.ac.id/index.php/ldj/article/view/11497/4946> accessed on 21 March 2022.

<sup>4</sup>Darwan Prinst. (2003). *Hukum Anak Indonesia*. Bandung:Citra Aditya Bakti.p.20

all applicable legal rules. This protection is important because children are part of society who have physical and mental limitations, so children need special protection and care.

Law enforcement is a form of upholding the human rights<sup>5</sup> inherent in victims, and providing sanctions for perpetrators who have removed the rights of victims. Sanctions imposed on children in the law are determined based on the age difference, namely children aged 8 to 12 years are only subject to action, for children aged over 12 to 18 years can be sentenced to criminal.<sup>6</sup>

Murder in terminology means the case of killing, or the act of killing. While the term KUHP murder is the intentional killing of another person. The crime of murder is considered a material offense if the offense has been completed by the perpetrator with consequences that are prohibited or unwanted by law.<sup>7</sup>The provisions of the Criminal Code, criminal acts aimed at the lives of others are regulated in book II chapter XIX, which consists of 13 articles, namely Articles 338 to 350. The form of the crime of taking the life of another person can be in the form of intentional (*dolus*) and unintentional (*alpha*). Deliberation is an act that can occur with pre-planned or unplanned. But what is important from an event is the intention that is realized through the actions carried out to completion.<sup>8</sup>

Regulations regarding criminal acts committed by minors include laws to protect children in the legal context to perpetrators who commit crimes. Regulated in Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection, emphasizes the need for heavier criminal sanctions and fines for perpetrators of crimes against children. The explanation of Article 1 of Act No. 35 of 2014 concerning Child Protection states that:

- Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.
- 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 protection from violence and discrimination.

The explanation in Article 76C of Act No. 35 of 2014 concerning Child Protection which states that: Everyone is prohibited from placing, allowing, doing, ordering to do, or participating in violence against children. Also Article 76E of Act No. 35 of 2014 concerning Child Protection that: Everyone is prohibited from committing violence or threats of violence, coercing, deceiving, committing a series of lies, or persuading children to commit or allow obscene acts. While Article 80 paragraph (3) of Act No. 35 of 2014 concerning Child Protection states:

- Everyone who commits atrocities, violence or threats of violence, or abuses children, shall be sentenced to a maximum imprisonment of 3 (three) years and 6 (six) months and/or a maximum fine of IDR 72,000,000.00 (seventy-two million rupiah).

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<sup>5</sup> Nur Khasanah and Umar Ma'ruf. The Law Enforcement in Implementation of Diversion on Children in Confrontation with the Law. *Law Development Journal Volume 2 No 2, June (2020)*. P.60. URL <http://jurnal.unissula.ac.id/index.php/ldj/article/view/11436/4486> accessed on 20 March 2022.

<sup>6</sup>Sutedjo Wagiaty, Melani. (2013). *Hukum Pidana Anak*. Bandung:PT Refika aditama, p.4

<sup>7</sup>M. Sudradjat Bassar. (2001). *Tindak-tindak Pidana Tertentu di Dalam KUHP*. Bandung:Remaja Rosdakarya, p.10

<sup>8</sup>Ahmad Wardi Muslich. (2005). *Hukum Pidana Islam*. Jakarta:Sinar Grafika, p.140

- In the event that the child as referred to in paragraph (1) is seriously injured, the perpetrator shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).
- In the event that the child as referred to in paragraph (2) dies, because the perpetrator is sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah).

Article 82 of Act No. 35 of 2014 concerning Child Protection that:

- Anyone who violates the provisions as referred to in Article 76E shall be sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).
- In the event that the criminal act as referred to in paragraph (1) is committed by a parent, guardian, child caretaker, educator, or educational staff, the penalty shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1).

The purpose of this study was to determine and analyze the application of the law on child violence that caused death with child perpetrators.

## 2. Research Methods

This research used Sociological Juridical Method with secondary data as initial data, which is then followed by primary data in the field refers to the legal norms contained in the legislation. The analysis used qualitative data in the form of data that cannot be measured or assessed with numbers directly. Furthermore, it is analyzed with regulations related to the problem under study.<sup>9</sup>

## 3. Results and Discussion

### 3.1 The application of law in criminal acts of violence against children that cause death with child perpetrators

The definition of a child as someone who is born as a result of a relationship between a man and a woman if bound in a marriage bond, in positive law in Indonesia, a child is defined as a person who is not yet an adult (*inferiorjarig/person under age*), the understanding of children is important, especially with regard to efforts to formulate limits on criminal responsibility efforts (criminal responsibility) against children who commit criminal acts, at what age level children who behave criminally can be held criminally responsible.<sup>10</sup> The limitation of liability for the age of the child contained in several laws and regulations Article 1 of the convention on the rights of the child, a child is defined as any person under the age of 18 years, except under the law that applies to children, maturity has been obtained

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<sup>9</sup>Tatang M. Amirin. (2000). *Menyusun Rencana Penelitian*, Ed.3. Jakarta: PT Raja Grafindo Persada, p.134

<sup>10</sup>Paulus Hadisuprpto. (2010). *Delinkuensi Anak Pemahaman dan Penanggulangannya*. Malang: Selaras, p.11

previously. What is meant by children are those who are not yet mature who become adults because of mental and physical regulations, they are still immature.<sup>11</sup>

The legal provisions regarding the age limit for children's criminal liability for children who commit crimes are regulated in criminal law in Indonesia, namely in the Criminal Code and then replaced by Act No. 3 of 1997 concerning Juvenile Court (Children Court Law), and finally replaced by Act No. Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). With the hope that guarantees for the rights of children are fulfilled, it is no exception for children who commit criminal acts. Even if a child commits a crime that harms society, the principle of child protection must still be upheld.

Cases of child delinquency in Indonesia are not new, starting on Thursday, January 31, 2019 at 16.00 wib, child N, who was 17 years and 10 months old with his other friends, was hanging out in the Magelang City area. Child N saw that some of his friends took a sickle from 1 (one) blue black guitar bag. Child N also took a sickle with a length of approximately 25 cm with a handle made of silver iron with a handle length of 15 cm in 1 (one) blue and black guitar bag brought by Anak N and put in a red jumper jacket inscribed Nevada is imposed. Child N immediately understood that his friends were going to do a brawl and at that time Child N immediately followed his friends with a group of other students who rode with each other using motorbikes together towards Magelang Regency where when walking hand in hand with other groups of students. Arriving in an area in Magelang Regency, Anak N heard the sound of firecrackers and saw from the opposite direction a group of students wearing white trousers and most of them wearing jackets. The motorbikes that were ridden by Children N and L immediately overtook and were in the front group, Then Child N got off the motorbike and ran while carrying a sickle which Child N was carrying with the child's right hand towards the victim's child NA who was wearing a black jumper jacket and white trousers at which time Child N saw the victim's child NA also carrying a sickle at once, Child N immediately swung the sickle he carried with his right hand to the back of the child of the victim of NA 1 (one) time. Witness I immediately turned back. Child N dropped a sickle that Child N used to slash the child victim of NA, then Child N rode a motorcycle to Gor Gemilang Reg. Magelang Child N moved by using a black Honda Beat motorbike, who was with L at the time. Anak N rode with them with Child N in the middle and L at the back while I rode a 2nd grader (two) student, on a black color Honda Beat motorbike they walked hand in hand to I's house and when on the way L said "I already repeated it with I / T", Meanwhile, I said "I hit the stomach earlier".

As a result of the actions of Children N, L and I, the child of the victim NA died on Thursday, January 31, 2019. Based on the Death Certificate from the Muntilan Regional General Hospital, Magelang Regency which explained that the patient on behalf of NA died, the victim was still aged seventeen ( 17) Year which in Act No. 23 of 2002 concerning Child Protection which has been amended by Act No. 35 of 2014 concerning amendments to Act No. 23 of 2002 concerning Child Protection, namely someone who is not yet eighteen (18) years old, including children in the womb. In

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<sup>11</sup> Achmad Budi Waskito. Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi. Jurnal Daulat Hukum Vol. 1. No. 1 March (2018). URL : <http://jurnal.unissula.ac.id/index.php/RH/article/view/2648/1992> accessed on 20 March 2022.

the decision of the Mungkid District Court, the panel of judges was sentenced to 3 (three) years and 6 (six) months in prison at the Class I Kutoarjo Child Special Guidance Institute (LPKA).<sup>12</sup>

The judicial process carried out against child perpetrators of violent crimes that cause death must pay attention to in accordance with Article 3 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System which states that every child in the criminal justice process has the right to include:

- Treated humanely with regard to needs in accordance with the general.
- Separated from adults.
- Carry out recreational activities.
- Free from torture, punishment or other cruel, inhuman, and degrading treatment and dignity.
- Not sentenced to death or life imprisonment, and Not arrested, detained, or in prison, except as a last resort in the shortest time.

The Public Prosecutor (JPU) in his decision Number 3/Pid.Sus-Anak/2019/Pn Mkd in the judicial process gave charges that were deemed to have violated, namely: First, Article 80 paragraph (3) Jo. Article 76 C of Act No. 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, Second, violating Article 170 paragraph (2) of the 3rd Criminal Code, third, violating Article 351 paragraph (3) of the Criminal Code Jo. Article 55 paragraph (1) 1 of the Criminal Code. Based on the legal facts revealed in the trial, the evidence regarding the elements of the crime that the defendant was charged with the most appropriate alternative indictment in the trial. The public prosecutor proved the charge which according to him was the most proven, namely the first charge of violating Article 80 paragraph (3) Jo. Article 76 C of Act No. 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. In the trial the public prosecutor proved one by one the articles charged with the following elements:

#### *The "Everyone" Element*

Criminal law is meant by everyone is aimed at legal subjects, namely only humans (natuurlijke personen) as bearers of rights and obligations and able to account for the actions they have done. During the trial the child can answer properly and competently all the questions asked by the Panel of Judges and by the Public Prosecutor, and during the trial there is no justification or excuse for forgiveness in the child to remove the sentence. Therefore, 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. It is proven based on the Birth Certificate Quotation Number 1381/2001 issued by the Head of the Population and Civil Registry Office of Magelang Regency who was born on March 18, 2001 so that at the time of the incident, namely on January 31, 2019 the child was 17 (seventeen) years and 10 (ten) months old. Thus the elements have been fulfilled and have been proven legally and convincingly according to law in the trial.

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<sup>12</sup>Contents of Decision Number 3/Pid.Sus-Anak/2019/Pn Mkd

*The element "that places, allows, commits, orders to do or participate in committing violence against children that causes death"*

Violence is any act against a child that results in physical, psychological, sexual misery or suffering and/or neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty.<sup>13</sup> While the definition of a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.<sup>14</sup> At the time of the incident, the victim NA based on the Birth Certificate Quotation Number 41523/TP/2011 issued by the Department of Population and Civil Registration of Magelang Regency was born on June 11, 2001 so that at the time of the incident, namely on January 31, 2019, the child was 17 (seventeen) years 7 (seven) years old. ) month. Based on the statements of the witnesses, the statements of Child N, the instructions and evidence that were mutually compatible in the trial with legal facts obtained. As a result of the actions of Anak N, witness L and witness Indra, victim NA died on Thursday, January 31, 2019, based on a Death Certificate from the Muntilan Regional General Hospital, Magelang Regency, dated January 31, 2019 which was signed by dr. Delima Anggini, a doctor at the Muntilan Hospital, Magelang Regency, who explained that the patient was on behalf of NA when he arrived at the Muntilan Hospital on January 31, 2019 at 17.15 Wib. Based on Visum Et Repertum Number: 004/2019 dated February 18, 2019 signed by dr. Lipur Riyantiningtyas BS, Sp.FM (K), SH, as the Head of the Forensic Medicine Examination Team of Dr. RSUP. Sardjito Yogyakarta, who in conclusion explained, The body was male, body length of one hundred and seventy-three centimeters, weight ninety-three point nine kilograms, blood type A. Then the cause of death was due to a sharp trauma to the chest penetrating to the heart which resulted in bleeding in the heart causing suffocation. The time of death is estimated to be between two and eight hours from before the time of examination.

The application of the law in the formulation of the article by the public prosecutor from the description above. The public prosecutor pays attention to Article 188 paragraph (1) of the Criminal Procedure Code which determines that a clue is an act of an event or condition which due to their suitability between one another and the crime itself indicates that a crime has occurred and who the perpetrator is. Article 188 paragraph (2) of the Criminal Procedure Code stipulates that the instructions as referred to in paragraph (1) can only be obtained from: (1) witness statements, (2) letters, (3) statements of the defendant by taking into account the statements of the witnesses in the trial.

Judges have the most important role in a judicial body, because basically judges who have the right to decide on any ongoing case, in carrying out their duties to decide a case the judge must always adhere to the principles of an independent and impartial trial. Judges in making decisions on criminal cases are required to contain a formal requirement that has been determined in Article 197 Paragraph (1) of the Criminal Procedure Code, because non-fulfillment of these formal requirements can result in the judge's decision being null and void. In this case the

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<sup>13</sup>Article 1 paragraph (15a) of the Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection

<sup>14</sup>Article 1 number 1 of the Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection

judge gave the imposition of sanctions/punishments against the child, according to the judge that the imposition of sanctions/punishments on the child was not only a form of accountability for his actions.<sup>15</sup> In imposing sanctions on children, the child's rights and the best interests of the child must be considered. The judge also does not find things that can abolish criminal liability, both as justification and or excuses, then the child must be held accountable for his actions and must be given a punishment commensurate with his actions. Because the indictment is an alternative form, the Tribunal will choose which indictment is the most suitable and most in accordance with the facts revealed during the trial. Thus it becomes sentenced the defendant to imprisonment for 3 (three) years and 6 (six) months at the Class I Kutoarjo Child Special Guidance Institute (LPKA). In addition to imprisonment that will be imposed on the child, the child will also be sentenced to pay a fine, but based on Article 71 paragraph (3) of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, the criminal fine is replaced with job training for 6 (six) months at PSMP Antasena Magelang.

#### 4. Conclusion

The application of the law on criminal acts of violence against children that caused death with child perpetrators at the Mungkid District Court The judge does not find things that can eliminate criminal liability, both as justification and or excuses, then the child must be held accountable for his actions. So that the child is punished according to his actions. The panel of judges handed down a criminal verdict against Child N with imprisonment for 3 (three) years and 6 (six) months at the Class I Kutoarjo Child Special Guidance Institute (LPKA). In addition to imprisonment that will be imposed on the perpetrators, the perpetrators will also be sentenced to pay a fine but based on Article 71 paragraph (3) of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, the criminal fine is replaced with job training for 6 (six) months at PSMP Antasena Magelang. The Panel of Judges chooses the indictment which is most suitable and most in accordance with the facts revealed during the trial process.

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<sup>15</sup> Rendy Surya Aditama, Umar Ma'ruf dan Munsharif Abdul Chalim. Kebijakan Hukum Pidana Terhadap Anak Sebagai Pelaku Kejahatan Psikotropika Di Kepolisian Resor Magelang. *Jurnal Daulat Hukum* Vol. 1. No. 1 March (2018). URL : <http://jurnal.unissula.ac.id/index.php/RH/article/view/2625/1974> accessed on 21 March 2022.

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#### **Regulation:**

- [1] 1945 Constitution of the Republic of Indonesia
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