

The punishment of violence against children is reviewed from the perspective of the purpose of punishment

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Abstract: Violence against children is a criminal act that needs attention currently in Indonesia. Cases of violence against children, especially sexual violence, are quite high and the perpetrators are people close to them or even family members, requiring harsher criminal measures through the Child Protection Law. It is hoped that imposing high or serious penalties in resolving cases of violence against children can reduce the occurrence of violence against children in the future. The type of research used in this writing is analytical descriptive, by describing the problem of violence against children that occurs in Indonesia and then analyzing it based on relevant theories. The data used is secondary data; The data collection technique is carried out by searching for online data. The conclusion of this research is that the application of the Child Protection Law in resolving cases of violence against children by imposing heavy penalties has a strong basis, that punishment brings goodness, prevents worse incidents, and there is no other alternative for perpetrators of violence against children other than However, the imposition of serious criminal penalties is an effort to reduce the occurrence of criminal acts of violence against children. So far this has not been successful in reducing the current rate of violence against children, other efforts are needed that can support the realization of the objectives of this punishment.

Keywords: Violence, Children, Crime.

1. Introduction

Physical, psychological and sexual violence against children is a very prominent crime currently in Indonesia (Kayowuan Lewoleba and Helmi Fahrozi, 2020). This phenomenon is an iceberg phenomenon, where the amount of reported violence is much smaller than the violence that actually occurs (Muhammad Jadi, 2021). The fear and ignorance of the victim and the victim's family about what should be done is the main reason why these crimes are not reported (Hendriana, 2016).

The National Commission for Child Protection (Komnas PA) released its 2023 report regarding violence and bullying during 2023. The number of complaints was 3,547 cases, consisting of 958 cases of physical violence, 674 cases of psychological violence and 1,951 cases of social violence (Novianto et al. 2024).

In a press release from the National Commission on Violence Against Women regarding the launch of the annual record of cases of violence against women in 2023, the number of cases of violence against women in 2023 was recorded at 289,111 cases. This data shows that the number of violence against women has decreased (55,920 cases, or around 12%) compared to 2022. Referring to the iceberg phenomenon, data on cases of violence against women is data on cases reported by victims, companions and families. Meanwhile, unreported cases of violence against women may be greater (Zulfiani et al. 2019).

The 2023 annual records (Catahu) also note that the characteristics of victims and perpetrators still show the same trend, namely that the victims are younger and have less education than the perpetrators. Over the last three years the number of perpetrators as parties who should be role models, protectors and symbols of the state's presence has increased by 9%, exceeding the 2021 Catahu average of 5%. This confirms that the root of

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Received: Mar 21, 2024;

Revised: Mar 27, 2024;

Accepted: Apr 01, 2024;

Published: Apr 30, 2024



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the problem of violence against women stems from the imbalance in power relations between the perpetrator and the victim. The perpetrator's source of power is stronger when the perpetrator has political power, knowledge, structural position, and religious figure (Simbolon et al. 2022).

Violence against children also has a bad record, as evidenced by the increase in the number of child abusers every year (Yuniyanti, 2020). Children as victims of violence are often neglected, because they cannot speak out loud about what they have suffered (Rizkiani, 2023). Parents, as the front guard for child protection, often become the perpetrators of these criminal acts (Afrillyana, 2021). Various reasons cause violence against children, starting from economic factors, the environment, disharmony in the household, rude behavior from adults, and so on (Erniwati and Fitriani 2020). Children who should be protected are used as targets for venting all their problems. Children are used as objects because the perpetrators consider them to be the easiest objects to abuse (Yudaningsih, 2015).

Legal protection for crime victims needs to receive serious attention, the problem of crime and human rights in relation to criminal law enforcement is actually not a simple task to realize (Mulyadi 2017). There are many events in people's lives that show that these two things receive little attention from the government, even though it is very clear that in Pancasila as the philosophy of life of the Indonesian people, issues of humanity and justice have a very important place as the embodiment of just and civilized humanitarian principles and the principles of social justice for all Indonesian people (Yunarto 2020).

The sharp increase in the number of cases, namely more than 2000 cases in one year, raises concerns about the future of Indonesian children. However, the existence of Law Number 23 of 2002 concerning Child Protection gives great hope to the Indonesian people, that children as the future generation of the nation are guaranteed the security and safety of their lives. The record of developments in violence against children, especially sexual violence against children, is very worrying, requiring legislators to make changes to the law; the birth of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection; then the government stipulated Government Regulation in Lieu of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection, which was then stipulated by Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 regarding Child Protection.

The Witness and Victim Protection Agency (LPSK) considers that sexual crimes occurring in Indonesia are very massive, so special attention must be paid to cases of sexual violence. In 2022, LPSK received 536 requests regarding cases of sexual violence against children, this number increased by 25.82% compared to 426 requests in 2021.

Cases of violence against children in 2 years, namely 2021 and 2022, as presented in Table 1, increased quite high, meaning that the government's efforts to provide protection to children must be further increased, so that children receive justice in their lives. Justice to obtain protection, security, safety and tranquility in their growth and development.

The problem of violence against children becomes more complex when the perpetrators of the violence are people closest to them, people they trust, even parents who are supposed to protect and supervise them. Violence and threats of violence certainly cause trauma for children, so that problems then increase with the task of rehabilitating in an effort to recover from this trauma so that children can live normally again without fear.

The aim of this research is: first, to determine trends in the types and severity of crimes in judges' decisions in cases of criminal acts of violence against children. Second, knowing the application of criminal theory by judges in criminal decisions in cases of criminal acts of violence against children, as well as what factors are behind it.

2. Materials and Methods

The type of research in writing this article is analytical descriptive research, namely describing the problem of violence against children that occurs in Indonesia and then analyzing it based on relevant theories (Bogdan, Taylor; Lexy J. Meleong, 2021). The approach method used is a normative juridical approach using secondary data obtained by searching, selecting, collecting and inventorying data related to violence against children (James W, Elston D, 2020). The data collection technique was carried out by searching for online data (Julianto, 2018).

The online data search technique referred to is the procedure for conducting data searches through online media such as the internet or other network media that provide online facilities, thereby enabling researchers to utilize online information in the form of data or theoretical information; and can be held accountable academically (James W, Elston D, 2020). Next, analysis was carried out using qualitative analysis methods.

The online media which are the main sources of information include komin-fo.go.id, kompas.com, detik.com. This media was chosen as the main source because it often discusses news about violence against children.

3. Results and Discussion

3.1 *Application of the Child Protection Law in resolving cases of violence against children.*

Article 1 number 1 of Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In the dictum considering the law, it is stated that every child has the right to survival, growth and development and the right to protection against violence and discrimination.

Special treatment is needed for children who are victims of crime, because the consequences will affect their growth and development and subsequent life. In the next life, the victim's child may become a perpetrator of the same crime or become an apathetic child because he feels he is worthless.

In criminal law, the losses experienced by children as victims of acts of violence have not been concretely regulated. This means that criminal law provides protection to children as victims, more abstract protection or indirect protection and not concrete.

Fulfillment of children's rights to avoid violence is regulated in Article 4 of Law Number 23 of 2002 concerning Child Protection which states "every child has the right to live, grow, develop and participate appropriately in accordance with human dignity, and to receive protection from violence and discrimination.

The juridical definition of violence is contained in Article 1 number 15a of Law Number 35 of 2014, that what is meant by violence is any act against a child which results in physical, psychological, sexual, and/or neglect, misery or suffering, including threats to commit violence. unlawful acts, coercion or deprivation of liberty.

From data released by the Ministry of Child Empowerment and Protection, some of the violence that occurs includes physical, psychological, sexual violence, exploitation, criminal acts of human trafficking (TPPO), neglect and others. Nationally, sexual violence is the highest number of violence. This also prompted the government to issue Government Regulation in Lieu of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection, which was then stipulated by Law Number 17 of 2016 concerning the Second Amendment to the Law. Law Number 23 of 2002 concerning Child Protection.

The high rate of violence against children needs to receive attention and become a priority for law enforcement in resolving cases. In substance, the existence of the Child Protection Law with two amendments is considered sufficient to handle cases that arise, because the law stipulates sanctions and firm action for perpetrators of violence against children. Determining heavy sanctions and harsh measures will certainly not guarantee the success of overcoming violence against children if they are not implemented well.

The harsh action threatened against perpetrators of violence against children is the chemical castration sanction for perpetrators of sexual violence. Article 81 Paragraph 7 of Law Number 17 of 2016 regulates chemical castration which is an additional punishment for perpetrators of sexual violence against children where the implementation of this castration is accompanied by rehabilitation. In its implementation, it turned out that this act of chemical castration became a polemic among several experts, not only legal experts but also doctors and human rights activists.

The policy of determining sanctions in criminal law cannot be separated from the objectives to be achieved in punishment. In other words, the formulation of the objectives of punishment is directed at being able to distinguish and at the same time measure the extent to which the types of sanctions, both penal and non-penal, which have been determined at the legislative policy stage, can achieve their objectives, namely providing effective protection and welfare of the community.

Table.2 Number of violence against children that occurred in 2021 and 2022 in Indonesia

No.	Violence	2021	2022
1	Physique	3.437	3.746
2.	Psychic	3.602	4.162
3.	Sexual	8.730	9.588
4.	Exploitation	276	216
5.	TIP	406	219
6.	Neglect	1.037	1.269
7	Other	1.866	2.041

Source: SIGAKEMENPPPA

Table 3. Application of the Child Protection Law to several cases of violence against children

DECISION	CRIMINAL ACT	CRIMINAL/ACTION
Banjarasin District Court Number 858/ Pid.Sus/2022/PN Bjm	Article 81 (3) Law Number 35 of 2014	Imprisonment 18 years Fine Rp. 1,000,000,000,- (1 billion) subsidiary 1 (one) month of imprisonment Additional punishment: Chemical castration for 2 years.
PT Tanjungkarang	Number Article 81 (1) Law No.17 of	20 years imprisonment

42/PID/2021/PT TJK	2016 Jo. Article 76 D Law no. 35 of 2014	Fine Rp. 800,000,000,- subsidiary 3 (three) months imprisonment Restitution payments Rp. 7,700,000.-
Banta Eng District Court Number 87/ Pid.Sus /2020/Ban	Committing violence against children resulting in death	13 years' imprisonment and fine Rp. 1,000,000,000 (1 billion)
Ruteng District Court Number 25/Pid.Sus/ 2020/PN Rtg.	Article 82 (1) Law No.17 of 2016 Jo. Article 76 E Law No.35 of 2014	Imprisonment 7 years Fine: Rp. 100,000,000 subsidiary 4 months imprisonment
	Deliberately committing violence or threatening violence against a child in order to have ongoing sexual intercourse with him	10 years imprisonment Fine Rp. 1,000,000,000 (1 billion rupiah)
Muara Bulian District Court Number 165/Pid.Sus/2020/PN Mbn	Article 81 (5) Law No.23 Than 2022 Jo. Law No.35 of 2014 Jo. Law No.17 of 2016 Jo. Article 55 (1) 1st of the Criminal Code	Life Imprisonment

Source: Directory of Decisions of the Supreme Court of the Republic of Indonesia

PT Tanjungkarang Decision No. 42/PID/2021/PT TJK corrects the Sukadana District Court's decision regarding chemical castration; Sukadana District Court Decision No.287/Pid.Sus/2020/PN SDN sentenced the defendant to 20 years in prison and a fine of Rp. 800,000,000 subsidiary 3 months in prison and imposing chemical castration on the defendant for a maximum period of 1 (one) year carried out after serving the main sentence. Sentenced the defendant to pay restitution to the victim's child in the amount of Rp. 7,700,000,-

PT Banjarmasin No. 50/ PID.SUS/2017/PT BJM strengthens the Batulicin District Court Decision Number 52/Pid.Sus/2017/PN.Bln. which sentenced the defendants to life imprisonment for committing violence, forcing the child to have sexual intercourse with them together, which resulted in the victim's death.

On average, the verdicts handed down in cases of violence against children are high/heavy. It is hoped that the imposition of serious crimes will have a deterrent effect on the perpetrators and can prevent other people from committing the same act. The imposition of a crime on someone who commits a criminal act means inflicting suffering on that person as retribution for their actions.

According to Jan Rummelink, we will need justification for the imposition of suffering which in criminal law is carried out with awareness and is desired for the perpetrator of the crime. The fact that the imposition of punishment or criminal sanctions has been known for a long time and is considered acceptable by any society, can also be attributed to the fact that without it society would not be possible.

Many criminal law thinkers (including Enschede, Van Veen) still maintain retribution and redemption. Van Veen stated that basically every crime is retaliation for an error. There lies the justification for the authority to impose a crime. G.Knigge in his inauguration as professor in Groningen (1988), stated that punishing is basically taking revenge, and that this is not a bad thing in itself; Taking revenge as a reaction to behavior that violates norms is a very natural human action.

Punishment has always been a problematic issue, because crime always relates to actions which, if not carried out by the state based on law, constitute acts that violate morals.

Antony Duff and David Garland group various types of criminal objectives into two large groups, namely consequentialist and non-consequentialist. For consequentialists, whether something is true or not depends solely on the consequences as a whole. If the consequences are good, then the action is right, but if the consequences are bad, then the action is wrong. Therefore, to find justification for punishment, it must be proven that a) the punishment brings good; b) punishment prevents worse events, and c) there is no other alternative that can provide equally good results.

Punishment of cases of violence against children with heavy criminal penalties has a strong basis both in terms of the theory of the purpose of punishment put forward by Antony Duff and David, that punishment brings goodness, prevents worse incidents, and there is no other alternative for perpetrators of violence against children. other than the maximum penalty imposed.

Likewise, it is analyzed using the basic ideas of G.Knigge (professor in Groningen) who states that punishing is basically taking revenge, and taking revenge as a reaction to behavior that violates norms is a very natural human action. This fairness is based on laws made by the authorized body, thereby legitimizing the imposition of crimes carried out by judges in deciding the cases before them. This is reinforced by Sudarto's opinion regarding the teaching of retribution.

According to Sudarto, in fact, nowadays there are no longer any adherents to the classic doctrine of retribution, in the sense that punishment is a necessity for the sake of justice alone. If there are still adherents of the theory of retribution, they are said to be adherents of the modern theory of retribution, such as van Bemmelem, Pompe and Enschede. Retaliation here is not an end in itself, but rather as a limitation in the sense that there must be a balance between the act and the crime. The judge only sets the limits of the crime; The penalty must not exceed the limits of the author's fault.

3.2 Imposing Heavy Crimes as an Effort to Reduce the Occurrence of Violence Against Children.

The idea regarding the purpose of punishment that people adhere to today, is actually not a new idea, but rather, has been influenced to a greater or lesser extent by the thoughts of thinkers or writers several centuries ago, who have expressed their opinions

about the basis of justification. from a punishment, either those who have seen the punishment merely as a punishment, or who have linked the punishment to the aim or objectives to be achieved with the punishment itself.

Basically there are three main ideas about the goals to be achieved with a punishment, namely: (1). To improve the personality of the criminal himself; (2). To deter people from committing crimes; (3). To make certain criminals incapable of committing other crimes, namely criminals who by other means can no longer be corrected.

Not only is the imposition of a criminal sentence on the perpetrator a consequence of his actions, it is also because the state has regulated that certain actions are prohibited from being carried out and are threatened with criminal sanctions for those who violate them. Sanctions contained in legal regulations are intended as a deterrent for perpetrators and to provide a sense of justice to victims.

Efforts to prevent crime for centuries have been made by creating fear. This is one reason why the ancient criminal law then developed criminal sanctions that were so cruel and also that their implementation had to be carried out in public, namely with the aim of providing a warning to the wider community by one example. The aim of threatening or frightening (in the context of prevention) was developed by Paul Johann Anselm von Feuerbach (1775-1833) although in a different context. Feuerbach's theory of psychological coercion, which is the basis for the name of his theory, requires deterrence, not through the imposition of punishment but through criminal threats in legislation which therefore must also clearly state the crime and punishment (which is threatened against him).

According to Sudarto, the use of criminal law is to overcome a symptom (*currieren am symptom*) and not a solution by eliminating the causes. So the limited capacity of criminal law so far is also caused by the nature/nature and function of criminal law itself. Criminal sanctions (law) so far are not a cure (*remedium*) to overcome the causes (source), but simply to overcome the symptoms/consequences of disease. In other words, criminal (legal) sanctions are not causative treatment but only symptomatic treatment.

The government's efforts to overcome violence against children by using the Child Protection Law are one of the efforts that can be made to overcome the consequences of their actions. The causes of violence against children cannot be overcome by punishment. However, it is hoped that the imposition of serious penalties can prevent people from committing the same acts. Law enforcement, which is the process of realizing the goals of punishment, is expected to be a means of preventing criminal acts from occurring.

Law enforcement of legal rules is not tied to actions by punishing and sending people to prison as much as possible. However, what is more substantial is how law enforcement efforts can guide community members so that they do not commit unlawful acts. In the context of law enforcement, the police can act to mobilize community participation in a democratic law enforcement process.

There is a significant relationship between community participation and the behavioral attitudes of law enforcers in the law enforcement process. Community participation is a form of participatory concept by providing reports about criminal acts that have occurred. Public reporting is useful for law enforcers so that they will behave anticipatorily towards these criminal incidents. Obstacles in the law enforcement process can be caused by two factors, namely the absence of public reports (unreported) which will hamper the effectiveness of the law enforcement process. Likewise, if public reports

do not receive complete resolution (unsolved) from law enforcement officials, this will give rise to public distrust in the law enforcement process.

Based on the theory and opinion above, high levels of criminal penalties should be directly proportional to the reduction in the number of criminal acts that occur. However, the fact is that the relatively high criminal penalties imposed on perpetrators of violence against children so far are not directly proportional to the hope of reducing these criminal acts.

To achieve this hope, it is necessary to build community participation with law enforcement efforts to guide members of the community so that they do not commit acts that violate the law and if there is a public report, it should be resolved completely.

4. Conclusions

Based on the results of the research carried out, it can be concluded that although the implementation of the Child Protection Law by imposing heavy penalties has a strong basis, the argument is that this punishment brings goodness, prevents worse incidents, and there is no other alternative for perpetrators of violence against children. Apart from maximum criminal penalties, this has not been able to significantly reduce the number of violence against children. The imposition of serious crimes, even though it can be considered a reasonable action and is legitimized by the applicable law, needs to be supported by other efforts that can be more effective in achieving the objectives of the punishment. A more holistic approach is needed, such as strengthening the education system and socializing human values from an early age, empowering communities in recognizing and reporting acts of violence, as well as rehabilitation for perpetrators of child violence, to ensure comprehensive protection for children and prevent acts of violence in the future. The contribution of research results on violence against children in Indonesia not only provides a better understanding of the problem, but also provides a basis for concrete action that can improve the protection and welfare of children in this country.

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