

Legal Protection Against Children Who Commit Murder

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Abstract

Taking another person's life or what is commonly known as murder is an act that ¹³only violates the law, but also violates the norms found in society. Currently, the crime of murder is *not only committed by adults, but also by children*. Children who should still be gaining knowledge at school and away from committing criminal acts, must face legal problems. For this reason, it is necessary to provide legal protection so that children become the nation's next generation who have a bright future. The problem raised in this research is the legal protection provided to children who commit the crime of murder. This research is normative legal research. Based on the research results, it was found that when children commit criminal acts, the punishment is different from the punishment for adults. Children who commit the crime of murder cannot be sentenced to death or life imprisonment. The maximum sentence that can be imposed on a child is half the basic sentence for an adult. This is of course given considering the child's age, which is full of instability and still requires a lot of recovery in order to achieve a better future.

Keywords: Protection, Law, Child, Murder.

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A. Introduction

Various detrimental actions often occur in society. In fact, this act is an act that violates the law. One of the violations of law that currently frequently occurs is taking another person's life, which is commonly known in society as murder.

Taking another person's life or murder is a criminal offense regulated in Indonesian criminal law. As an act that violates the law, it will of course have an impact on legal consequences, namely the conviction of someone as the perpetrator of murder. Taking another person's life is an act that not only violates legal norms, but also violates the norms that apply in society, including religious norms.

Perpetrators of murder in today's society not only come from adults, but are also committed by children. Even though the perpetrator is a child, in the concept of criminal law, the perpetrator can be punished in accordance with the ¹³applicable laws. However, the concept of criminalizing children must continue to be used as an effort to provide legal protection to *children*.

Legal protection for children as perpetrators of criminal acts must continue to be pursued as much as possible. The punishment for children as perpetrators of criminal acts of murder is different ²²that for adults. As we know, children have a very strategic role, and it has been explicitly stated that *the state* ¹⁸guarantees every child's right to survival, growth and development. Apart from that, children also have the right to protection from violence and discrimination. ⁵

Children are the shoots, potential, and successors of the young generation to *the ideals of the nation's struggle*, have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future.¹

Internationally, *every* country has an obligation to guarantee every implementation by every human being, including children. Juridically, every country is responsible for providing a good living for children, providing welfare both physically and mentally, and keeping away all kinds of dangers that threaten a child.²

¹ M. Nasir Djamil *Anak Bukan Untuk Dihukum*, Jakarta: Sinar Grafika, (2013): p 8.

² Ratri Novita Erfianti. *Hukum Perlindungan Anak di Indonesia*. Malang: Universitas Muhammadiyah Malang, (2020): p.1.

Children are the next generation of the nation and the next generation in terms of development of the nation and state for the future, therefore children are prepared to become a generation that is prepared as implementing subjects for sustainable development and in control of the future of a nation and state, including Indonesia.³ Therefore, every child must be given legal protection, including children who commit criminal acts of killing other people, while still paying attention to their future interests. The problem discussed in this research is the legal protection provided to children who are perpetrators of criminal acts of murder.

This research is normative juridical research, namely research that examines library materials. Normative legal research focuses its object of study on positive legal provisions, then focuses on the meaning of legal principles.⁴ Normative legal research functions to provide juridical arguments when there is a legal vacuum, ambiguity and conflict of norms.⁵

Normative juridical research discusses¹¹ doctrines or principles in legal science. Apart from the clear principles contained in Articles 5 and 6¹¹ Law Number 12 of 2011 concerning the Formation of Legislative Regulations, certain statutory regulations may contain other principles in accordance with the legal field of the relevant statutory regulations. For example, the doctrine of good faith, the doctrine of legal facts, and so on. This research is often called theoretical research.⁶ The data source used is secondary data. The data collection tool used is documentation study, with qualitative analysis techniques.

B. Discussion

1. Punishment of Murder Perpetrators

The term murder is not known in the concept of criminal law, but is well known by the public as a term aimed at the act of taking another person's life. The act of taking a life or a crime against life is a criminal offense regulated in Indonesian criminal law. The regulations are specifically contained in the Criminal Code. Crimes against life (*misdrijven tegen bet leven*) are attacks on the lives of other people. The legal interest that is protected and which is the object of this crime is human life.⁷ Crimes against life in the Criminal Code can be differentiated or grouped on 2 grounds, namely:

1. Based on the elements of error, and
2. On the basis of the object (life).⁸

On the basis of guilt, there are 2 groups of crimes against life, namely:

1. Crimes against life committed intentionally (*dolus misdrijven*), are crimes contained in Chapter XIX of the Criminal Code, Articles 338 to 350.
2. Crimes against life that are not committed intentionally (*culpose misdrijven*), are contained in Chapter XXI (specifically article 359).

Based on the object (protected legal interests), crimes against life are intentionally divided into 3 types (found in the Criminal Code), namely:

1. Crimes against people's lives in general are contained in Articles: 338, 339, 340, 344, 345.
2. Crimes against the life of a baby at or shortly after birth are contained in Articles: 341, 342 and 343.
3. Crimes against the life of a baby still in the mother's womb (fetus), are contained in Articles 346, 347, 348 and 349.

Crimes against life that are committed intentionally are called or qualified as murder, which consists of:

1. Ordinary murder in the form of *doodslag* (Article 338 of the Criminal Code).
2. Murder that is followed, accompanied or preceded by another criminal act (Article 339 of the Criminal Code).
3. Premeditated murder (*moord*) Article 340 of the Criminal Code.
4. The mother's murder of her baby at or shortly after birth (Articles 341, 342 and 343 of the Criminal Code).

³ Gishriana, *Perlindungan Hukum Bagi Anak di Indonesia*, Jakarta: PT. Raja Grafindo Persada, (2011): p.11.

⁴ Djulaeka dan Devi Rahayu, *Buku Ajar Metode Penelitian Hukum*, Surabaya: Scopindo Media Pustaka, (2019): p.10.

⁵ 25, p.20.

⁶ Ali Zainuddin, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika (2013).

⁷ Adam Chazawi, *Kejahatan Terhadap Tubuh & Nyawa*, PT. Raja Grafindo: Jakarta, (2010): p.55.

⁸ *Ibid*.

5. Murder at the request of the victim (Article 344 of the Criminal Code).
6. Advocating and assisting suicide (Article 345 of the Criminal Code).
7. Abortion and murder of the womb (Articles 346 to 349 of the Criminal Code).

A crime committed not intentionally is a crime as formulated in Article 359 of the Criminal Code, which states "Whoever, through his fault (negligence) causes another person to die, shall be punished with a maximum imprisonment of 5 years or a maximum imprisonment of 1 year".

The elements of the formula above are:

1. There is an element of negligence (culpa);
2. There is a certain form of action;
3. There are consequences of the death of another person;
4. There is a casual relationship between the form of the action and the result of the other person's death.

2. Legal Protection for Children as Perpetrators of Murder

Children are connoted as humans who have not yet reached physical maturity, social maturity, personal maturity and mental maturity.⁹ Some expert opinions about children are outlined as follows:

1. According to John Locke, children are individuals who are still clean and sensitive to stimuli originating from the environment.
2. According to Augustine, children are not the same as adults, children have a tendency to deviate from law and order due to limited knowledge and understanding of the realities of life, children learn more easily from the examples they receive from rules that are force".
3. According to R.A. Kosnan, children are young people at a young age in their soul and life journey because they are easily influenced by the circumstances around them.¹⁰

Children are the most valuable treasure for the family, society and nation. He is the party on which the family, community and nation pin their hopes. More deeply, children are the party who will determine whether a country is brought towards prosperity or towards decline.¹¹

Children are a gift from the Almighty, which every parent desires and their value is very valuable. Children are an age that requires responsibility from their parents and other adults. At this time, children need support from many parties for their growth and development. This also includes requiring legal protection from the state.

In the process of development and growth, from fetus in the womb to adulthood, a child's personality or characteristics are formed which are influenced by internal and external factors. In this process, children can commit acts that are contrary to criminal law or acts that are viewed by society as disgraceful acts. This situation is interpreted as the child committing mischief. The problem faced is when the state implements protection for children, because children are the hope of the nation and must be protected and have their rights fulfilled but the child commits a criminal act in that situation the state has the duty and responsibility to uphold the law and provide justice to the child as the perpetrator. or to the victim.¹²

Children are figures who must be protected, even if the child has committed a criminal act or an act that violates the law. The consequences of a child's actions breaking the law do not mean that the child is not protected. In fact, protection must still be implemented, in the interests of human rights and the best interests of children.

Children's rights are an inseparable part of human rights. Human rights are rights inherent in humans that reflect their dignity and must receive legal guarantees, because rights can only be effective if they can be protected by law.¹³ The child's immature age means that the child is still at a level of instability, which can result in the child falling into unlawful acts, especially taking the lives of other people. When

⁹ Iyadi, *Hukum Perlindungan Anak*, CV. Mandar Maju: Bandung, (2009): p.3.

¹⁰ A. Koesnan, *Susunan Pidana dalam Negara Sosialis Indonesia*, Bandung: Sumur, (2005): p.113.

¹¹ Liza Agnesta Krisna, *Hukum Perlindungan Anak Panduan Memahami Anak Yang Berkonflik Dengan Hukum Dilengkapi Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak*, Yogyakarta: Dee Publish Publisher, (2018): p.1.

¹² B.d.

¹³ Maidin Gultom, *Perlindungan hukum terhadap anak dalam Sistem Peradilan Pidana Anak di Indonesia*, titik Bandung. Refika Aditama, (2008): p.7.

a child commits an act of killing another person, the child must continue to be directed and guided for the sake of achieving his future, without forgetting legal protection for him.

Law in society is used as a binder and regulator of relationships between fellow members of society. Law requires society as a forum for the existence and effectiveness of law. All societal problems, including children's problems, can certainly give rise to legal problems, and require legal protection. The law functions as the protection of human interests, law enforcement must pay attention to 4 elements, namely:¹⁴

1. Legal certainty (Rechtssicherheit),
2. Legal benefits (Zweckmassigkeit),
3. Legal justice (Gerechtigkeit),
4. Legal guarantee (Doelmatigkeit).

Legal problems become real if legal instruments implement them well and comply with standardized rules so that there is no systematic misuse of rules and laws, meaning using legal codification and unification for the sake of realizing legal certainty and legal justice.¹⁵ The law must be able to be utilized by members of society in order to protect children.

Indonesia, as a country that upholds the supremacy of law, requires firm, precise and consistent steps to uphold law and justice, in order to achieve security and order to create prosperity.¹⁶ Success in implementing the law is that the purpose of the law has been achieved. The purpose of legal norms is to regulate human interests. If legal norms are obeyed and implemented by the community and law enforcers, then the implementation of the law is said to be effective or successful in its implementation.¹⁷

The Indonesian state, based on Article 28 D of the 1945 Constitution, guarantees the rights of citizens to be recognized (de facto), guaranteed, protected and given legal certainty (supreme) which is fair and treated equally before the law. This shows that there are no exceptions to provide protection to everyone in legal matters.¹⁸

In essence, children cannot protect themselves from various actions that cause mental, physical and social harm in various areas of life. Children must be assisted by other people in protecting themselves, considering their situation and conditions, especially in the implementation of juvenile criminal justice which is foreign to them. Children need to receive protection from errors in the application of laws and regulations that apply to them, which can cause physical, mental and social harm. Legal protection for children in a national society is a benchmark for that nation's civilization, because it must be carried out in accordance with the capabilities of the homeland and nation. Child protection activities are a legal action that has legal consequences. Therefore, there needs to be legal guarantees for child protection. Legal certainty needs to be sought for the continuity of child protection and to prevent abuses that lead to undesirable negative consequences in the implementation of child protection activities.¹⁹ Protection is the provision of guarantees for the security, prosperity and peace of the protector against all dangers that threaten the protected party.²⁰

According to Philipus M. Hadjjon, what is meant by legal protection is a subjective condition which expresses the necessity for a number of subjects to immediately obtain resources, in order to continue the existence of legal subjects who are guaranteed and protected by law, so that their power is organized in the process of political decision making and economics, especially in the distribution of resources, both individual and structural levels.²¹

Legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by law is also related to the rights and obligations, in this case, which humans

¹⁴ Ishaq, *Dasar-dasar Ilmu Hukum*, Jakarta: Sinar Grafika, (2009): p.43.

¹⁵ *Ibid.*, p. 44.

¹⁶ Koto, I., & Lubis, T. H. (2021). Tindak Pidana Penyelundupan Pakaian Bekas Dalam Perspektif Teori Kepastian Hukum (Studi Kasus Di Kantor Bea Cukai Teluk Nibung Tanjung Balai). *Buletin Konstitusi*, 2 (1).

¹⁷ Fajaruddin, F. (2018). Efektivitas Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal Dalam Perlindungan Konsumen. *De Lega*, 10 : *Jurnal Ilmu Hukum*, 3(2): p.204-216.

¹⁸ Zainuddin, Z., & Riza, F. (2021). Melindungi Nelayan Dari Persoalan Hukum Melalui Lembaga Bantuan Hukum. *DE LEGA LATA: Jurnal Ilmu Hukum*, 6(2): p.382-388.

¹⁹ Liza Agn, *27* Krisna, *op.cit.*, p. 2.

²⁰ Abintora Prakoso, *Hukum Perlindungan Anak*, Yogyakarta: Laksbang Pressindo, (2016): p.4.

²¹ *Ibid.*, p.5.

have as legal subjects in their interactions with fellow humans and their environment. As legal subjects, humans have the right and obligation to carry out legal actions.²²

Based on the legal concept that applies as a system, the concept of legal protection for children in this case is legal protection carried out systemically which includes:²³

1. Legal substance, namely the values of principles and norms in applicable children's legislation and their nature is to protect children's rights.
2. Legal structure, namely the legal institutional structure that takes place in dealing with children who are suspected of being perpetrators of criminal acts based on formal power, which has the authority to control and handle it in a preventive and repressive manner to form the values, principles and norms in statutory regulations. applicable invitations that protect the rights of children who are suspected of being perpetrators of criminal acts.
3. Legal culture, namely ideas, views and attitudes that function as a social force or pressure for community control as a basis for the operation of applicable laws and regulations which can support efforts at a legal institutional structure that protects the rights of those suspected of being perpetrators of criminal acts.

Protection²⁶ of citizens from all acts of discrimination is the implementation of constitutional rights as stated in the 1945 Constitution of the Republic of Indonesia.²⁴

If we look at the provisions contained in the articles of the Criminal Code which regulate the act of taking life, a person who violates these articles is threatened with a maximum penalty, namely the death penalty, life imprisonment, or a maximum sentence of 20 years in prison. But this is not the case with a child who commits a¹³ ct of taking a life or murder.

Legal protection for children who commit criminal acts in the Juvenile Criminal Justice System Law Number 11 of 2012 is that the prison sentence that can be imposed on a child is a maximum of 1/2 (one half) of the maximum threat of imprisonment for adults (Article 81 point 2). This means that if the threat of imprisonment for an adult who commits murder is a maximum of 20 years, then the threat of imprisonment for a child is a maximum of half of 20 years, that is, a maximum of 10 years in prison.

Legal protection for children who commit the crime of murder is also explained in Article 81 point 6 of Law Number 11 of 2012, namely that if the crime committed by the child is a crime that is punishable by the death penalty or life imprisonment, the penalty imposed is a maximum prison sentence. 10 (ten) years.

This means that if a child commits the crime of murder, the child cannot be sentenced to death or life imprisonment. The punishment imposed on children is a maximum prison sentence of 10 years. Children cannot be sentenced to more than 10 years, as stipulated in these provisions. The consequence that arises is that the judge may decide to sentence a child who commits the crime of murder to less than 10 years. This is of course a form of providing legal protection to children who have committed the crime of murder. Apart from that, this is also a form of protecting children's rights in order to give them the opportunity to become better citizens again, especially when they return to their community. This legal protection for children is an effort so that children who have committed the crime of murder can still live their lives normally, and are able to become the nation's next generation who have a brighter future.

Judges, when making decisions, must be absolutely sure that the decisions taken will be a strong basis for returning and directing children towards a good future to develop themselves as citizens who are responsible for the life of the nation.²⁵

Children are the nation's next generation who will continue the leadership milestones in the future. To become a resilient generation, as children grow up they must be free from all actions that are detrimental to their future.²⁶

²² Mukti, A. Fadjat, *Tipe Negara Hukum*, Malang: Bayumedia Publishing, (2005): p.74.

²³ Abintora Prakoso, *Op.cit.*, p. 6.

²⁴ Nurhilmayah, (2019). Perlindungan Hukum Terhadap Perempuan Berhadapan Dengan Hukum Sebelum Dan Sesudah Lahirnya Perma Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum. *De Lega Lata: Jurnal Ilmu Hukum*, 4(2): p.211-219.

²⁵ Pratama, M. G., Hasan, H., & Marilang, M. (2021). Dampak Komunikasi Terhadap Penjatuan Sanksi Pidana Pembunuhan Oleh Anak Di Bawah Umur Dalam Hukum. *Jurnal Mercusuar*, 2(3).

²⁶ Simatupang, N., & Faisal, F. (2022). Bullying Oleh Anak di Sekolah Dan Pencegahannya. *DE LEGA LATA: Jurnal Ilmu Hukum*, 6(2): p.446-464.

The development of children must grow naturally both spiritually, physically and socially in order to create good responsibilities which will lead them to positive things, but if the next generation experiences negative things it can disrupt the child's development so that the nation can be said to be progressing in a negative sense.²⁷

Children as part of the young generation are the successors to the ideals of the nation's struggle and human resources in the future. In order to create quality and moral Indonesian human resources, continuous guidance and protection is needed for survival, physical, mental, social growth and development as well as protection from all possibilities that will endanger them or their children in the future.²⁸

C. Conclusion

Children are the future of the nation. As potential leaders in the future, children must still be protected, even if the child has committed the crime of murder. The legal protection given to children as perpetrators of the crime of murder is that children cannot be subject to the death penalty, and cannot be sentenced to life imprisonment. The maximum sentence that can be imposed on a child in this case is a maximum of half the basic sentence of an adult who commits the crime of murder, namely a maximum of 10 years in prison..

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