

# ACTION CRIMINAL PERSECUTION WHICH DONE PARENTS REGARDING CHILDREN ARE REVIEWED FROM A CRIMINAL LAW PERSPECTIVE

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**Abstract**— Basically, parents must give protection to child from follow violence and abuse. This matter in accordance with regulation of Article 13 paragraph (1) of the Law Number 23 of 2002 concerning Child Protection (“Child Protection Law”) as stated changed by Law Number 35 of 2014 concerning Changes to the Law Number 23 of 2002 concerning Child Protection (“UU 35/2014”) which states that every child during in care of parents, guardians, or any other party is responsible answer on nurturing, entitled get protection from treatment. Study This aim For study about protection law to children who are victims of bullying criminal abuse by his parents. With use approach review literature and methodology study law normative. In terms of this, sanctions criminal towards parents who do it persecution to his son is: in the form of criminal prison and criminal fine, plus with one third as referred to in Article 356 of the Criminal Code. (Abstract)

**Keywords:** Action Crime, Abuse, Parents, Children.

## I. INTRODUCTION

Basically, every citizen has the right to receive protection in all forms violence, including violence in House ladder No exception for protection towards children. It is the responsibility of parents in general to raise, love, love, and educate their children as best as possible, because children are a trust as well as the gift of God Almighty which must always be maintained because it is in the child since born until die world has attached dignity And dignity man completely Which must be upheld, children's rights are part of the human rights contained in the 1945 Constitution and the United Nations Convention on Rights Child. From the perspective of national and state life, "children are the future of the nation and generation successor to the nation's ideals, so that it grows and develops, participates as well as entitled

on protection from action violence And discrimination as well as right civil And violence".<sup>1</sup>

Children are a gift from Allah Almighty as potential future generations of the nation, in the law Islam, person old must educate his children with Good, If child become naughty, means parents don't carry out their obligations well, then it's parents who bears the consequences, namely being given sanctions (punishment) for his negligence. Parent own obligation to children are obliged to care for and educate them his children until the children are married and can stand on their own, even if the marriage is between parents have broken up, parents' obligations to children will not end because in reality they don't there are such things as former children and former parents. The bond between children and parents is bond born And inner Which can not disconnected in a way law.

Problem persecution This often happen, Good in the middle public nor in environment family. Crime to persecution is Wrong One crime Which the more develop from time to time. One of them can be seen from the perpetrator No Again person mature but Also children, the culprit No only person other However can happen in environment family. Family Which consists from Father, Mother, And child Which works each other protect love And love, And there is bond, connection blood, and kinship relations. Children in the family have a clear role It is stated that the state guarantees every child's right to survival, growth and development develop as well as for protection from violence and discrimination.<sup>2</sup>

The current conditions are already difficult and heavy, coupled with the children's actions sometimes tend not to listen or even fight parents, this can be trigger spontaneous actions from parents aimed at having a polite effect on parents, which may be interpreted as leading to

<sup>1</sup>Hadi Setia Tunggal, Discussion  
Constitution Child Protection Number 23 of 2002,  
SinarGraphics, Jakarta, 2009, p. 34

<sup>2</sup>m Nasir Djamil, *Child No For Punished*.  
(Jakarta: Ray Graphics, 2013), p. 1



acts of violence. Many people Parents consider violence against children to be normal. They think violence is part of disciplining children. They forget that parents are people most responsible answer in strive well-being, protection, as well as enhancement continuity life, And optimizing grow flower his son.<sup>3</sup>

There are many non-criminal cases where the criminal perpetrators are minors. In the positive legal context in Indonesia, minor perpetrators still have to be held accountable for their actions. In taking responsibility for their actions, juvenile criminals receive special legal protection starting from the level of inquiry, investigation, prosecution, until a court decision is handed down. Underage criminals have the right to receive assistance from a legal advisor during the trial, and usually the courtroom used is the juvenile courtroom. Law enforcement carried out against minor criminals must be specific, this is to protect children's rights in accordance with Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. In this case, there are still those who treat underage criminals the same way they treat adult criminals, thus law enforcement for underage criminals is still not implemented well. Article 1 point (1) of Law Number 3 of 1997 concerning Children's Courts which states that a child is a person who in a child case has reached the age of 8 years but has not yet reached 18 years and is not yet married. In order to be held responsible for his actions, the maker still needs to have the condition that the person who committed the action made a mistake. In other words, the maker must be accountable for his actions or if we look at it from the perspective of his actions, his actions must be accountable to that person. In this case, the principle "There is no crime without error" applies. Law and truth, is a question that will never end in one word.<sup>4</sup>

For protect child from action violence (persecution) And Also For To realize a sense of legal justice in society, basically there is no wayother, but How The method so that supremacy law can enforced. With understanding that law Which There is enforced to Who just without look hair even if they are their own parents, therefore providing criminal sanctions for perpetrators of criminal acts should able to provide a deterrent effect.

Based on description above, researcher submit formulation problem that is How follow criminal abuse by parents to child reviewed in perspective law criminal?

## II. METHODOLOGY

Research methods used in study This is method juridical normative, as consequence logical from characteristic law, with using secondary data that is material primary law and materials law secondary. Primary legal materials are material binding law, then in study This material primary law consists from Law Number 23 of 2002 about

protection child Finally changed with Act Number 35 Year 2014 about change on the Law Number 23 2002 about Protection Child. Legal materials secondary namely the data obtained from study literature and documentation, ie results research and processing of others, who have available in form literature or documentation.

## III. RESEARCH RESULT

Act violence abuse perpetrated by adults to child show that There is rights violated child that is every child entitled grow and thrive as well as participate in a way reasonable in accordance with honor and dignity humanity. Children have rights get protection from exists violence and discrimination (Article 4 of Law No.23 of 2002 concerning Child protection). Problem protection law and rights for children who are victims of abuse is one of side approach For protect rights violated child. For protection rights children who are victims of abuse can done in a way orderly, orderly and responsible so required something regulation harmonious laws with development Indonesian society. The reality until moment This effort enforcement law to the perpetrator did it persecution child Not yet can done in a way maximum by the government. Justice provided by implementation law through dropping penalty the law imposed to the perpetrators persecution impressed No fair or No in accordance with the consequences it causes. Injustice law this is what is called can distance affected communities disaster or become a victim of something crime No Want to willing deal with the world of justice.

Arrangement about follow persecution to child If can We Look in a way generally said as something follow persecution there is in provisions of Article 351 of the Criminal Code, which reads: Article 351: (1) Persecution threatened with criminal imprisonment for a maximum of 2 (two) years and 8 (eight) months or criminal a maximum fine of Rp. 4,500,- (four thousand five hundred rupiah). (2) If the act result injuries serious, guilty threatened with criminal imprisonment for a maximum of 5 (five) years. (3) If it results death, threatened with criminal imprisonment for a maximum of 7 (seven) years. (4) With persecution equalized on purpose damage health. (5) Experiment For do crime This No convicted. Whereas If We refers to Law no. 23 of 2002 concerning Protection child about punishment or penalty possible punishment given to the perpetrator did it persecution to child can We Look in the provisions of Article 80 paragraph (1) of the Child Protection Law are also in place in a way special arrange about persecution to child, with stated: <sup>3</sup>Everyone who does cruelty, violence or threat violence, or persecution to child, punished with criminal imprisonment for a maximum of 3 (three) years and 6 (six) months and/ or a maximum fine of IDR 72,000,000.00 (seven twenty- two million rupiah).

of the 1945 Constitution of the Republic of Indonesia states that "Everyone has the right For life as well as entitled For maintain life and living." Article 28 B paragraph 2 states that "Every child entitled on continuity

<sup>3</sup> Moerti Hadiati Soeroso, Violence in the Household in Perspective Juridical Victimology, RayGraphics, Jakarta, 2010, p.

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<sup>4</sup> Bambang Fitrianto, T. Riza Zarzani, Anto

Simanjuntak, Legal Science Analysis of Normative Studies of Truth and Justice, SOUMATERA LAW REVIEW Volume 4, Number 1, 2021, p. 94

live, grow and develop as well as entitled on protection from violence and discrimination." Furthermore, commitment the confirmed in Article 28 D paragraph 1 which states that "Everyone has the right on recognition, guarantee, protection and certainty fair law as well as the same treatment in front of law" in frame operate the principle of "Equality before the Law". Criminal Law on Minors and Age Limits Age limits somebody snared under the Criminal Code is 18 years.

Criminal law is scope law public focus to interests of many people. Criminal law contains such norms important for life public so that enforcement of these norms No can submitted to party private but must organized and implemented in a way firmly by the authorities in matter This is government.<sup>5</sup> Understanding violence is something actions that refer to attitudes or behavior that is not humane, so can hurting other people who are victims of violence that and also of course harms the person who does it violence Because Certain will get punishment in accordance applicable law. Definition violence is A expression well done in a way physique or verbally which reflects on action aggression and attacks on freedom or dignity someone who can carried out by individuals or group of people. Generally violence related with authority and when translated in a way free violence can meaning that all authority without heed validity use or action arbitrariness the entered in formulation violence This. In the beginning at first term follow violence or child abuse and neglect originates and begins known from the world of medicine around in 1946. Caffey, a radiologist, reported case form of injury symptoms clinic like broken bone compound lengths (multiple fractures) in children or baby accompanied subdural hemorrhage without know the cause (unrecognized trauma). In the world of medicine case This known with the term Caffey Syndrome. Henry Kempe said case neglect and abuse experienced children with The term Battered Child Syndrome is: " Each circumstances caused lack of care and protection to children by parents or nanny other." Here is what it means as follow violence to child No only wound heavy of course, but including wounds bruised or swelling though and followed failure child For develop Good in a way physique nor intellectual.<sup>6</sup>

Protection article child below This arrange penalty fines and penalties for anyone who violates it provision in the Child Protection Law (UU PA). Children need I got just hands from impact ne gative pe rke mbangan fast,current, and current development | globalization in the field communication and information, moving | science | knowledge technology, etc pe ru materials style and manner life p cell of the parent who has away I brought | pe ru materials basic social in ke live pan a very deplorable society | face to | values and behavior | child.<sup>7</sup>

Violence is action intimidation carried out more party strong to more party weak, violent can form diverse

form that is violence physical, mental, and sexual. Violence is action aggression and violations (torture, beatings, rape, etc.) that cause or intended For cause suffering or hurt others, and to some extent action hurt animal can considered as violence, depending on the situation and values related social with cruelty to animal. Violence also contains trend aggressive For do destructive behavior. Damage treasure object usually considered problem small compared to with violence towards people. Violence by nature classified to in two forms violence any, which includes violence in scale small or what not planned, and coordinated violence, carried out by groups group good given right nor No.<sup>8</sup>

In chapter 1 paragraph 1 it says that System Justice Juvenile Crime is a resolution process conflicted child with law. The process in question covers stage investigation until stage guidance. Apart from that, according to the SPPA Law, children can charged criminal is child who has 12 years old and under 18 years old. Diversion Agreement in crime child, there are known with term diversion. Diversion is possible done provided get agreement from the victim and not is repetition criminal. If the victim doesn't want diversion, legal process will Keep going continues. The results of the Diversion Agreement can be form: Peace with or without change make a loss ; Submission return to parent / guardian ; Opt-in in education or training at the institution education or LPKS no later than three month ; or Service public. Children Under 12 Years of Age do follow criminal decision taken is: Surrender to parents / guardians ; Engage in education, coaching and mentoring programs in agencies government or LPKS no later than 6 months. Children Under 14 Years of Age In Article 69 Paragraph 2 of the SPPA Law, children in conflict with law but Not yet even 14 years old only can charged action and not can done detention or corporal punishment. Plus, it 's light or its weight punishment depending on the actions performed and the circumstances personal child with consideration justice and humanity. Children Aged 14-18 Years If a child has 14 years old or more, you can done law criminal form detention. Detention set If circumstances and actions child endanger public. Consideration other is if he does own punishment criminal seven year or more according to the SPPA Law.

Explanation of the Law. No.23 of 2002 concerning Child Protection states that crimes committed by adults, no can equalized so just with deed child or the usual juvenile delinquency done by children, because must differentiated nature and form deed a child with adult actions. Protection to child in connection problem child with law, as part main enhancement quality quality life man. In accordance with Law no. 23 of 2002, namely all activity For guarantee and protect children and their rights so that they can life grow, develop, and participate, optimally accordingly with honor and dignity humanity, as well get protection from violence and discrimination. According to Arif Gosita protect child in

<sup>5</sup>Rika Jamin Marbun, Implementation of Indonesian labor law from the perspective of the Central Java welfare state: Eureka Media Aksara, p. 20

<sup>6</sup>Rahmayanti, & Ismaidar, 2023. The Influence of Domestic Violence (KDRT) on the Level of Harmony in the Household. Central Java: Eureka Media Aksara, p. 2

<sup>7</sup>Syaiful Asmi Hasibuan, Ediwarman, Marlina, Edy Ikhsan, Formulation of State Protection for Children Who

Commit Domestic Violence (Case Study at the Medan District Court), Usu Law Journal, Vol 4 No. 2 (March 2016), p. 30.

<sup>8</sup>Ismaidar & Rahmayanti, 2023. Legal Protection for Children as Victims of Domestic Violence. Central Java: Eureka Media Aksara, p. 6-7

essence is protect family, community, homeland, and nation. Possibility happen abuse power and strength at times implementation criminal, yes give rise to mental, physical and social victimization in children criminal. Absence regulation applicable legislation become base appropriate punishment, too cause exists victimization structural, which can give rise to mental, physical and social suffering in children criminal. Based on Constitution Number 11 of 2012, completion case child more prioritize external processes Justice with involve perpetrator, victim, family perpetrators /victims, and other related parties For together look for fair settlement with emphasize recovery back to the situation again, and not revenge For look for justice restorative as arranged in Article 1 paragraph (6) of the Law Number 11 of 2012 concerning System Juvenile Justice.<sup>9</sup>

According to provisions stated within Constitution Number 35 of 2014 concerning Child Protection in Article 1 number 2 explains that protection law to child is “ everything activity For guarantee, protect child as well as their rights so that they can live, grow, develop and participate optimally appropriate with rights and dignity as well as get protection from violence and discrimination ”. Provision from chapter lost emphasized with opinion from Arief Gosita namely: Protection child that is supported something efforts to ensure rights and obligations accomplished a acquired and retained children right For develop and grow in life in a way balanced and positive, so got it done fairly.<sup>10</sup>

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<sup>9</sup>Triono Eddy, & Alpi Sahari, "Criminal Law Enforcement Against Children Who Are Ensnared in Criminal Cases Through Diversion (Study at the Medan Police). Journal of Education, Humanities and Social

Sciences (JEHSS), Vol 3, No. 1, (August 2020) pp m: 78 - 84

<sup>10</sup>Moh Faisal Salam,, *Child Justice Procedure Law*, Mandar Maju, Bandung, 2005, p m.1