

APPLICATION OF CRIMINAL SANCTIONS AGAINST CHILDREN AS A PERPETRATORS OF ABUSE THAT CAUSE DEATH FROM THE JUVENILE CRIMINAL JUSTICE SYSTEM PERSPECTIVE

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Abstract

The main objective of this study is to describe the application of criminal sanctions against children who commit acts of abuse that result in death, as well as the legal protection from the viewpoint of the Juvenile Criminal Justice System. This study employs a normative juridical legal research methodology; the technique used in this legal research is statutory, case-based, and conceptual approach. The study's study found that the legal regulation of children who commit violent crimes under the Criminal Code does not reflect an authentic understanding of what constitutes violence. Only in article 89 of the Criminal Code does it indicate that what constitutes committing violence causes individuals to faint or become helpless (weak). Along with Article 89 of the Criminal Code, Article 170 is one of the articles included in Book II on Crime's Chapter V headed "Crimes against Public Order." Consequently, the criminal conduct as defined in Article 170 is first and foremost a criminal act that violates or disturbs public order. Criminal responsibility for children who commit acts of physical violence that result in death is tied to the arrangement in Article 351 paragraph (3) of the Criminal Code, as criminal responsibility is imposed on children when the child is found to have fulfilled the criminal element through an error committed by the child, violence committed by the child, and victims who are victims of physical violence are known to have died at the time or after the physical violence was committed.

Keywords: *Criminal Sanctions, Criminal Acts of Abuse by Children, Death, Legal Protection, Juvenile Criminal Justice System*

1. INTRODUCTION

According to Article 1 of Law No. 35 of 2014 amending Law No. 23 of 2002 concerning Child Protection, a child is defined as anybody under the age of 18 (eighteen), including a child still in the womb. The path of a child's life is unique in that his degree of success or failure throughout his formative years will decide his personal growth and destiny. Children's issues have long been at the forefront of national and international debates, since children are the younger generation who are the inheritors of the nation's principles and a critical role in implementing future growth. Consequently, children are the most critical component, since human existence and the survival of a country and state are inextricably linked (Hutabarat et al., 2022).

A child's right to life, growth and development, as well as their right to be protected from violence and discrimination, are explicitly guaranteed by the state because of the crucial role they play in nation. Child rights must be preserved and the state shall fulfill,

protect, and respect the rights of children, according to Article 21 Paragraph (2) of Law number 35 of 2014 about Amendments to Law number 23 of 2002 concerning Child Protection.

It is intended that through obtaining protection, children will be able to grow and develop normally and will be safeguarded from the threat of criminality that endangers them. The protection of children's rights has largely been regulated through laws and regulations, policies, businesses, and activities that ensure the protection of children's rights is realized, first and foremost on the basis of the fact that children are a vulnerable and autonomous group, in addition to the existence of groups of children who face obstacles to their spiritual, physical, and social development (Waluyadi, 2009).

As a result of this conduct being destructive to society and the state, the state responds with legislation in an attempt to minimize the degree of crime. Crime is defined as any action that is outlawed by the state. Not only have children been victims of crime but they have also become perpetrators of illegal activities, illustrating how crime has extended to all ages (Gultom, 2014).

When discussing the processes to be used to children who commit crimes and the need to apply procedures that are in the best interests of the child, there are a few key points to consider. Such inquiries must be addressed, since criminals must be punished, according to the law. Meanwhile, the crucial term when discussing something that is beneficial for children is not to punish (Waluyadi, 2009).

The Juvenile Criminal Justice System Act of Law number 11 of 2012 strives to offer the greatest possible care for children without jeopardizing society's interests or the institution of justice. The Juvenile Court's mission is same to that of other courts: to examine, decide, and resolve disputes involving children. In this instance, nurturing and safeguarding children needs both institutional and legal assistance that is more adaptable. Numerous variables may impact the crimes committed by minors, including the following:

1. Family issue

Family situations that can cause children to commit violent crimes in order to express their annoyance and anger include less harmonious parental relationships, divorce that causes problems, the birth of children out of wedlock that causes problems between parents and their children, a father who commits violence against their children, and mental disorders in either the father or mother.

2. Economic Factor

Poverty in a family often results in dissatisfaction with life and produces a number of challenges in terms of defining daily requirements, education, health, buying clothing, and rent payments, all of which may eventually harm the mind of both the parents and the children.

3. Surrounding environmental factors

The environment in which a child lives may also have an effect on his or her mentality, as can living in slum regions, regular brawls amongst inhabitants, drug trafficking, alcohol and free sex, and frequent exposure to violent and sexual situations.

The problem of juvenile delinquency is a problem that almost all countries in the world experience, including Indonesia. Child delinquency is a deviant behavior carried out by

children which leads to acts that violate the law. Incidents of criminal acts committed by children (Juvenile delinquency) today also occur in various regions, namely:

1. Children as perpetrators of criminal acts of abuse that cause death that occurred in the jurisdiction of the Central Jakarta District Court, according to the Central Jakarta District Court Criminal Case Decision number: 12/Pid,Sus-Anak/2020/PN Jkt Pst.
2. Children as perpetrators of criminal acts of abuse that cause death that occurred in the jurisdiction of the Mataram District Court, according to the Mataram District Court Criminal Case Decision number: 12/Pid.Sus- Anak/2016 PN.Mtr.
3. Children as perpetrators of the crime of murder accompanied by mutilation that occurred in the jurisdiction of the Medan District Court number: 774/Pid.Sus-Anak/2015/PN.Mdn.

As a reference in analyzing the application of criminal law against perpetrators of minors, the author also compares with examples of similar cases that have been discussed in the approved research, namely:

1. Iqbal Ali Ramdani, with the research title "Criminal Sanctions Against Murders Perpetrated by Minors Under the Criminal Law of Children in Indonesia" (Iqbal, 2020).

The research discover that, law enforcement officers must pay attention to the provisions of the rules that apply to defendants who in this case are categorized as children, in terms of imposing sanctions more towards education and character building for children so that threats of imprisonment are the last alternative in giving sanctions to children. It is hoped that a judge will not only see what are mitigating things for the defendant and are deemed sufficient to provide justice for the accused, not to provide a deterrent effect or retaliation for the crimes that have been committed by the perpetrators of the crime. The judge must determine which should be prioritized between the interests of legal certainty or the interests of justice. In other words, the type of criminal sanction when viewed from the purpose is more towards prevention so that people do not commit crimes, not aimed at preventing the crime from happening.

2. Ramadhiya Ardani, with the research title "Implementation of Criminal Sanctions Against Perpetrators of the Crime of Murder committed by Children in Yogyakarta" (Ardani, 2018).

The research results reveal that law enforcers are even more observant in handling and investigating cases that occur, especially those involving a child. Law enforcers can carry out targeted socialization specifically for children both through schools and the general public regarding the introduction of law to children so that awareness of the law arises. The existence of the Juvenile Justice Law is expected to be implemented properly. In addition, parents have an important role in the development of children, including parenting, approach, attention and supervision of children and instilling good values / morals in life. In addition, the community must be more alert and immediately report to local law enforcement if they know of incidents that violate the law.

3. Almunawar Sembiring, with the research title "Implementation of criminal sanctions

against child perpetrators of murder accompanied by mutilation from the perspective of criminal law and criminology" (Sembiring, 2017).

The results reveal that in order to reduce crime in terms of children in conflict with the law, the government should optimize the regulations governing children in conflict with the law and related regulations. So that the community does not lose confidence in law enforcement in efforts to overcome children in conflict with the law. Parents should pay special attention to their children, because children who are approaching adulthood are likely to become victims or perpetrators of criminal acts.

Correspondingly, the purpose of this paper is to examine the implementation of criminal sanctions against children who are perpetrators of crimes of abuse that lead to death, as well as the formulation of legal protection from the perspective of the Juvenile Criminal Justice System.

2. THEORETICAL BASE

2.1. Application of Sanctions

The definition of application in the Big Indonesian Dictionary (KBBI) is the act of applying. Meanwhile, some experts believe that application is an act of practicing a theory, method, and other things to achieve certain goals and for an interest desired by a group or group that has been planned and arranged beforehand (Usman, 2002 in (Hasibuan, 2016)).

Sanction is a punishment or coercive action that is given because the person concerned fails to comply with a law, rule, or order, as defined by Black's Law Dictionary Seventh Edition as follows:

"A penalty or coercive measure that results from failure to comply with a law, rule, or order (a sanction for discovery abuse)."

In this case, the general term used to refer to all types of sanctions, whether in the realm of civil, administrative, disciplinary, and criminal law is punishment (Marbun, 2012).

2.2 Criminal Sanctions

Criminal sanctions are misery or suffering imposed on someone who is guilty of committing an act prohibited by law. Criminal sanctions against judges for children are regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In the law, criminal sanctions that can be imposed on children are described in Articles 71 to 81.

a. Child

A child according to Article 1 point 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is "someone who is not yet 18 (eighteen) years old and is even still in the womb".

b. Children in Conflict with the Law

Children in Conflict with the Law according to Law Number 11 of 2012 concerning the Criminal Justice System is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime. The Law on Juvenile Court looks at the child's side of the actions he has committed, if the child commits a crime

before the child is 12 (twelve) years old, it is not categorized as a naughty child so that from a legal point of view he cannot be held accountable, on the contrary if he has reached the age of 12 (twelve) years to 18 (eighteen) years old can be held accountable for their actions, then if the child before the age of 18 (eighteen) years is married then it is not categorized as a child and the judicial process through general court is not juvenile justice.

c. Criminal act

A crime has the same meaning as a criminal event or offense. According to the formulation of legal experts from the *strafbaarfeit* translation, namely an act that violates or is contrary to the law or law, which act is carried out in error by someone who can be accounted for.

2.3 Legal Protection Theory

According to Satjipto Rahardjo, legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law (Rahardjo, 2009).

Furthermore, Phillipus M. Hadjon highlight that legal protection for the people is a preventive and responsive government action . Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion and responsive protection aims to prevent disputes from occurring, including their handling in the judiciary (Hadjon et al., 2005).

2.4 Criminal Theory

In general, it can be stated that there are 3 (three) groups of sentencing theories, namely: (a) absolute theory or retributive/*vergeldings* theory; (b) relative or objective theory (utilitarian/*doeltheorie*); (c) combined theory (*verenigings* theory).

2.4.1 Absolute Theory

According to absolute theory, punishment is imposed solely because someone has committed a crime or criminal act (*qual peccatum est*). Crime is an absolute consequence that must exist as a retaliation to the person who committed the crime. For example, if someone commits a murder, then the punishment commensurate with the act is to be sentenced to death.

2.4.2 Relative Theory

According to the relative theory, punishment is not to satisfy the absolute demands of justice. In other words, punishment is not just to commit a crime but has certain useful purposes. Retaliation itself has no value, but only as a means to protect the interests of society (social defense).

2.4.3 Combined Theory

According to the combined theory (*verenigings-theorien*), the purpose of the crime and the justification of the imposition of a crime, apart from being a retaliation, it is also recognized that punishment has benefits for both individuals and society. The first author to propose this theory was Pellegrino Rossi (1787 – 1884). The theory is referred to as a combined theory because according to Rossi, punishment is not only an effort to retaliate, but also has various effects, including repairing something that is damaged in society and generale prevention.

3. RESEARCH METHOD

This study uses a normative juridical legal research type with the approach of statutory approach, a case approach and a conceptual approach. The statutory approach is an approach that is carried out by analyzing the rules and regulations related to these legal issues. The case approach is an approach that is carried out by examining cases related to the issues at hand which have become court decisions that have permanent power. The conceptual approach is an approach that departs from the views and doctrines that develop in the science of law.

The sources of primary laws that will be used are as follows:

1. 1945 Constitution of the Republic of Indonesia
2. The Criminal Code Number 1 of 1946.
3. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.
4. Law Number 39 of 1999 concerning Human Rights.
5. Law Number 4 of 1979 concerning Child Welfare.

Furthermore, data collection techniques conducted by means of interviews, and literature study. The data obtained from both field studies and document studies are basically level data that is analyzed qualitatively, that is, after the data has been collected it is then poured in the form of a logical and systematic description, then analyzed to obtain clarity on problem solving, then conclusions are drawn deductively, namely those that are descriptive in nature. general to the particular.

4. RESULT AND DISCUSSION

4.1 Formulation of Sanctions according to the Juvenile Criminal Justice System Act (Law Number 11 of 2012)

Everyone who is responsible for the care of children must be aware of and adhere to their responsibilities, which include the rights of their pets. In accordance with Article 2 of Law No. 4 of 1979 concerning Child Welfare, children's rights are defined as follows: welfare, care and guidance; services to develop their abilities and social life; maintenance and protection from the environment during pregnancy and after birth; protection from the environment that can harm growth and development; protection from the environment that can harm growth and development (Gultom, 2014; Iskandar et al., 2021).

In the Criminal Procedure Code, there are several rights that can be used by victims of persecution in a criminal justice process, namely as follows:

1. The right to exercise control over investigators and public prosecutors
2. The victim's rights relate to his position as a witness.
3. The right to claim compensation due to an act of abuse that befell the victim
4. The right for the family to allow or not allow the police to perform an autopsy.

With regard to the right of the victim to file a claim for compensation through the amalgamation of decisions as regulated in Articles 98 to 101 of the Criminal Procedure Code. Interested parties need to pay attention to several things, namely as follows:

1. Losses that occur must be caused by the crime itself.
2. Losses caused by criminal acts or other people who suffer losses (victims) as a direct result of the crime.
3. The claim for compensation resulting from the crime was addressed to the perpetrator of the crime (the defendant).
4. And, the claim for compensation that was submitted to the defendant was combined or examined and decided at the same time at the examination and decision.

Meanwhile, 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 properly.
2. Children have the right to services to develop their abilities and social life, in accordance with the culture and personality of the nation, 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 of the environment that can harm or hinder normal growth and development.

According to Article 1 of the Law of the Republic of Indonesia No. 31 of 2014 on Amendments to Law No. 13 of 2006 on the Protection of Witnesses and Victims, a victim is defined as a person who suffers physical, mental, and/or economic damage as a result of a criminal act. The provisions of Article 5 of this Law specified that “witnesses and victims have the same right to obtain protection for their personal, family, and property security and to be free of threats related to the testimony they will, are currently giving, or have given; to participate in the process of selecting and determining the form of security protection and support; to provide information without fear of reprisal; to obtain a translator; to be free of entangled questions; and to obtain information regarding court decisions; obtain information in the event that the convict is released; identity is kept confidential; get a new identity; get a temporary residence; get a new place of residence; obtain reimbursement of transportation costs as needed; obtain legal advice; obtain temporary living expenses assistance until the protection period ends; and/or receive assistance”.

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

The juvenile criminal justice system (also referred to as SPPA), relates to the formulation of criminal sanctions against child offenders and the application of the criminal justice system to juvenile offenders.(Novira & Marlina, 2013)

Table 1 Formulation of Sanctions according to Law Number 11 of 2012

LAW NUMBER 11 OF 2012
Criminal sanctions 1. Basic Crime a. Criminal warning b. criminal subject to the following conditions: (1) coaching outside the institution (2) community service; or (3) supervision c. Work training d. Counseling e. Prison 2. Additional Crime a. Deprivation of profits obtained from criminal acts; or b. Fulfillment of customary obligations
Action Sanction 1. Return to parent/guardian; 2. Submission to someone; 3. Treatment in a mental hospital; 4. Treatment at the Social Welfare Organization (LPKS) 5. Obligation to attend formal education and/or training held by the government or private bodies; 6. Revocation of driving license; and/or 7. Repairs due to criminal acts.(Novira & Marlina, 2013)

The provision of criminal sanctions and actions, is determined based on the subject of the child who commits it, if the child who commits it is a naughty child whose category is a child who commits a criminal act, a criminal or action can be imposed. However, if the perpetrator is a naughty child whose category is a child who commits an act that is prohibited for children, then criminal sanctions can only be applied to him (Novira & Marlina, 2013).

Law number 11 of 2012 puts imprisonment as the latest principal punishment (ultimum remedium), as a form of implementing improvements, coaching, and educating children who are perpetrators of criminal acts, as well as providing far more sanctions for actions as things that better support the goal of construction in this law. Article 69 paragraph (2) states that “the imposition of criminal sanctions and sanctions for actions are determined based on the age of the perpetrator's child, children who are not yet 14 years old can only be subject to action” (Novira & Marlina, 2013).

Article 71 paragraph (3) of Law Number 11 of 2012 stipulates that “special provisions in the formulation of sanctions, namely if the material penalty is cumulative punishment in the form of imprisonment and fines, the fine will be replaced with job training”. This means that the formulation of sanctions in this law depends on the material law that has been violated by the child, if for example the material law violated by the child contains an alternative sanction system, then the sanction is given to the child, as well as on the formulation of a single sanction. This applies as long as it does not conflict with the provisions stipulated in Law Number 11 of 2012 concerning the juvenile criminal justice

system (Novira & Marlina, 2013).

In a single formulation, the sanctions that are set are only one form of the type of sanctions, both in the form of crime and action. Although this kind of formulation has a weakness because it is absolutely rigid, and is imperative. In fact, a single formulation system that is very rigid and absolute is felt to be in contradiction with the idea of correctionalism, because the conception of correctionalism is based on the idea of rehabilitation, resocialization and individualization of criminals. This system does not provide an opportunity for judges to apply appropriate sanctions to defendants. On the basis of that many experts argue to avoid using a single formulation. If it is forced to formulate, then the rigid and absolute nature of a single formulation needs to be balanced with the formulation of sentencing guidelines for judges. In the Draft Criminal Code, to compensate and avoid rigidity and absolute single formulation a guideline has been formulated as a safety valve. Those formulated in the guidelines include:

- a. The judge's authority not to impose a single sentence of imprisonment is formulated;
- b. The conditions or conditions for not being able to impose a prison sentence;
- c. An alternative type of sanction that can be imposed by a judge in lieu of a prison sentence that has not been imposed. In Article 49 of the concept, it is emphasized that the conditions that must be met in order not to impose a sentence are:
 - 1) The defendant commits a crime which is only punishable by a single imprisonment;
 - 2) The court is of the opinion that it is not necessary to impose a prison sentence after considering the purpose of punishment, guidelines for sentencing, as well as guidelines for imposing imprisonment.

If the above conditions are met, the court can impose a fine even though the crime in question is only punishable by a single imprisonment. In the alternative formulation, it is intended to provide a policy framework to apply the principle of subsidiarity in the use of sanctions. This means that the threat of a heavier sanction is only used if the lighter weight of the sanction is deemed not to support the achievement of the sentencing objective. In addition, the alternative formulation can give freedom to judges to choose one form of sanctions that are threatened in a law. Even though in the alternative formulation the judge has the opportunity to choose the type of crime, but in an effort to undergo the imposition of sanctions in accordance with the purpose of punishment, then the law should provide guidelines for judges in making their choices. Article 51 paragraph (1) of the RKUHP emphasizes that the choice of judges in imposing sanctions must always be oriented to the "purpose of punishment", and prioritize lighter types of punishment if the lighter sentence has fulfilled the purpose of sentencing.

4.2 Criminal Liability by Child as a Perpetrators of Physical Violence that cause Death

A child who commits physical violence that causes the death of the victim must be responsible for his actions. The responsibility of a child must be based on applicable laws and regulations because the child's actions are categorized as criminal acts. A child must be responsible for the death of the victim and if the child is proven guilty, he can be subject to criminal sanctions for the actions he has committed.

Talking about the criminal responsibility of children, it cannot be separated from the

crime of physical violence committed by children. Because criminal acts of violence committed by children are only meaningful when there is criminal responsibility for the child, where criminal responsibility is the continuation of objective reproaches that exist in the crime and subjectively to someone who meets the requirements to be punished for his actions.

In cases involving children and children, actually the perpetrators, witnesses, and victims are all victims. Children who become perpetrators do not escape from weak parental supervision or previously the child has seen or received bad behavior from their environment. Based on this, to state that the child in this case has committed a criminal act of violence, the child's actions must fulfill the elements intentionally as contained in the formulation of the criminal act of physical violence committed by the child, as well as the elements against the actions committed by the child. which is related to the chronology of the case and the facts of the trial, that it was found that the child had committed an act as regulated in Article 338 of the Criminal Code Jo. Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. The elements are as follows:

1. Whose element

Based on Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that 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. criminal act. Children at the age of 17 years and 2 months. So that children are still included in the provisions of Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. From the beginning of the examination in Children at the age of 17 years and 2 months. So that children are still included in the provisions of Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. From the beginning of the examination at the trial, it was found that the child is a physically and mentally healthy person so that he is considered competent as a legal subject. The child as a legal subject who is proposed in court as a criminal, has his identity checked as stated in the indictment and this criminal charge, and the child justifies it, so that there is no error in the child's submission in the trial (*error in persona*). Thus the element of whoever has been proven legally according to law.

2. Elements on purpose

The intention here is aimed at the loss of another person's life, this is what distinguishes it from the act of murder, because in the case of persecution, there is no intention or intention to take another person's life. The condition of intentionality is knowing and wanting (*willens en wetens*). That the element intentionally includes its actions and objects. This means that he knows and wants someone to die by his actions. And it is precisely in this element that the main difference between murder and persecution is that it results in the death of another person. In terms of abuse, the child as the perpetrator really doesn't want the victim to be persecuted to die, but the child only wants the victim to get sick, damage his health or get injured.

Furthermore, it should be noted that based on the theory of intentional criminal law, it consists of 3 (three) forms, namely:

- a. Deliberation as an intention, namely the existence of a goal to have an effect;
- b. Deliberate with a definite purpose, namely the perpetrator knows for sure and is

- absolutely sure that in addition to the intended effect there will be another result;
- c. Deliberation as a possibility is that someone commits an act with the aim of causing a certain result, but the perpetrator is aware that other consequences may arise which are also prohibited and threatened by law.

Because of this element is related to the inner attitude of the child, in order to prove this element, the material actions must first be proven, therefore the next element must be proven first. Based on the Jurisprudence of the Supreme Court of the Republic of Indonesia Decision No: 1295 K/Pid/1985 that “the intentional killing of another person can be proven by the tool used to commit the crime and the place on the victim's body where the tool was injured”. From these facts, the child's actions can be qualified as an intentional act. Thus, the element of intentionally has been fulfilled legally according to law.

3. The element of taking other people's lives

Based on the fulfillment of one of the elements of Article 338 of the Criminal Code in conjunction with the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, the Child must be declared legally and convincingly proven to have committed a criminal act as charged in a single indictment.

A criminal act or a criminal act only refers to the prohibition and threat of action with a crime. People who commit crimes are subject to criminal sanctions, as threatened depending on the existence of errors, because the principle of criminal responsibility is “Not being punished if there are no mistakes” (*Geen straf zonder schuld; Actus non facit reum nisi mens sit rea*). A person can be convicted, first there must be two conditions that become one condition, namely an unlawful act as an element of a criminal act and the act can be accounted for as an element of error. Errors must be accompanied by evidence with the judge's belief in an accused before the court.

Moeljatno, stated that it is impossible for a person to be held accountable (punished) if he did not commit a criminal act, but even if he commits a criminal act, he cannot always be punished (Moeljatno, 2008). In this context, children will still be punished with a different punishment model for the mistakes they have made.

The basis for the existence of a criminal act is the principle of legality, while the basis for criminal prosecution is the principle of error. This implies that the maker or perpetrator of a criminal act can only be punished if he has made a mistake in committing the crime. When someone is said to have made a mistake is a matter of criminal liability. A person has an error when at the time of committing a crime, from a social perspective he can be reproached because of his actions.

Criminal liability leads to the punishment of the perpetrator, if he has committed a crime and fulfills the elements that have been determined by law. Viewed from the point of view of the occurrence of a prohibited act, a person will be criminally responsible for these actions if the action is against the law. Viewed from the point of view of the ability to be responsible, then only someone who is

able to be responsible will be held accountable.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that "children in conflict with the law" are children who are 12 (twelve) years old but not yet 18 (eighteen) years old, so here it is clear that the legislators The law has agreed that the age of 8 (eight) years is indeed an age that still cannot be held accountable for the actions he has committed, because a child at that age still does not understand what he did". If a child who is not yet 12 (twelve) years old commits or is suspected of committing a crime or in other words that the child is not yet 18 (eighteen) years old, then the child will still be tried in the juvenile court.

Based on this fact, related to the application of sanctions Persecution as described previously is a form of action that can harm others physically and can even result in the loss of another person's life, is expressly regulated in Article 351 to Article 359 of the Criminal Code. Looking at the existing arrangements, at least the persecution is divided into three, namely: 1. Mild persecution; 2. Severe persecution; and 3. Persecution resulting in death. Except as referred to in Articles 353 and 356, that "persecution which does not cause illness or impediment to carrying out a job or search is threatened as light maltreatment, with a maximum imprisonment of three months or a maximum fine of four thousand five hundred rupiahs".

Based on the description above, the application of punishment to minors is basically different from the application of punishment to people who are old enough or adults. As according to the Juvenile Criminal Justice System, it is clear that minors who commit physical violence that results in death will be processed according to the applicable provisions, namely by looking at the elements of the article charged, but the trial process is in accordance with what is regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. If it turns out that the elements of the article on physical violence resulting in death are proven and committed with errors, then according to Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, punishment or imprisonment can be imposed on minors who have committing a crime is a maximum of (one-half) of the maximum penalty of imprisonment for adults.

A child who commits a crime, such as physical violence that results in death for the victim, will still be punished according to the applicable law. Although the process of applying legal sanctions against criminal acts of minors will be different from adults because the legal principle of "*lex specialis derogat legi generalis*" is applied, meaning that special legal rules override general legal rules, as regulated in Law Number 11 of 2012 regarding the Juvenile Criminal Justice System with the consideration that children are a mandate and gift from God Almighty who has the dignity and worth as a whole human being and to maintain their dignity, children are entitled to special protection, especially legal protection in the judicial system (Assa, 2019).

Judge is a job that has a big responsibility for the implementation of law in a country. In a sense, judges are the last bastion of law enforcement in a country. Therefore, if judges in a country have very fragile morals, then the legal authority in that country will be weak or mired (Supriadi, 2019).

The judge in adjudicating a case submitted to him must know clearly about the facts and events in the case. Therefore, before making a decision, the Panel of Judges must first find

the facts and events that were revealed from the defendant and the victim, as well as the evidence presented by the parties in the trial.

Decision making by judges in court is based on the indictment and everything that is proven in court trials, as stated in Article 191 of the Criminal Procedure Code. The indictment from the public prosecutor is the legal basis for the criminal procedure, because it is based on the indictment that the examination of the court hearing is carried out. A trial in court a judge cannot impose a crime outside the charge.

The judge who is the personification of the law must guarantee a sense of justice for everyone who seeks justice through a legal legal process, and to ensure that sense of justice a judge is limited by signs such as accountability, moral and ethical integrity, transparency and supervision (Kamil, 2012). The condition for integration is the idea that judges should decide cases in a way that makes the law more coherent, preferring interpretations that make the law more like a single moral vision (Imaningrum, 2019).

The basis of the judge's consideration in making a decision can be used as material for analysis of the orientation of the judge. In making a decision, it is also very important to see how the decision handed down is relevant to the purpose of the punishment that has been determined. In imposing a sentence on a defendant, especially a child, it needs to be handled specifically in order to provide protection and welfare for the child, considering that the emotional nature of the child is still unstable and cannot distinguish between good and bad actions (Gultom, 2014).

The obligation of judges who handle criminal acts of children who are in conflict with the basic law is to provide justice while protecting and nurturing children so that they can meet their future. In the author's opinion, the judge must be sure that the decision taken is in the best interest of the child because the judge's decision will affect the next life of the child concerned. The judge must really consider that the decision will lead the child to a good future to develop himself as a responsible citizen for the life of the family, nation and state.

Some of the main duties and obligations of judges in the field of normative justice, among others:

1. To judge according to the law without discriminating against people;
2. Assist justice seekers and try their best to overcome all obstacles and obstacles for the sake of creating a justice that is simple, fast, and low cost;
3. Must not refuse to examine and try a case that is submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it;
4. Provide information, considerations and advice on legal matters to other state institutions when requested;
5. Judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society.

Judges' roles in juvenile criminal justice are thus tied to the sorts of offences that may be imposed on juveniles. As a result, judges handling criminal cases involving children must be aware of the underlying issues, including the child's background; in this situation, the judge must exercise extreme caution in administering justice, avoiding arbitrariness and acting in line with the child's requirements. In this case, the judge is confronted with two competing interests: on the one hand, to serve the community's interests by enforcing the law indiscriminately; but on the other hand, to consider the future and the interests of the

child, whose mind has not yet matured, and to re-examine the purpose of holding the law. The law does not seek to satisfy, but to provide justice consistent with legal understanding. Therefore, a good judge will examine the trial from several angles and will investigate the causes of the errors.

5. CONCLUSION

Legal arrangements for children who are perpetrators of violent crimes according to the Criminal Code do not provide an authentic understanding of what is meant by violence. Only in article 89 of the Criminal Code it is stated that which is equated with committing violence, making people faint or helpless (weak). In addition to Article 89 of the Criminal Code, from a systematic point of view of the Criminal Code, Article 170 is one of the articles placed in Book II on Crime in Chapter V entitled "Crimes against Public Order". Hence, the criminal act as formulated in Article 170 is first of all a criminal act which constitutes a violation or disturbance to public order.

Criminal responsibility by children who are perpetrators of physical violence that results in death can see the arrangement in Article 351 paragraph (3) of the Criminal Code is tied, as criminal responsibility is imposed on children when the child is proven to have fulfilled the criminal element in the form of an error committed by the child, violence the physical abuse was done by the child, and the victim who was the victim of the physical violence is known to have died at the time or after the physical violence was committed.

REFERENCES

- Ardani, R. (2018). *Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Pembunuhan Yang Dilakukan Oleh Anak Di Yogyakarta*.
- Assa, A. (2019). Kajian Hukum Tindak Pidana Penganiayaan Berat Oleh Anak Di Bawah Umur. *LEX CRIMEN*, 8(4).
- Gultom, M. (2014). *Perlindungan hukum terhadap anak dan perempuan*.
- Hadjon, P. M., Martosoewignjo, S. S., & Basah, S. (2005). *Pengantar hukum administrasi Indonesia*.
- Hasibuan, A. R. (2016). Penerapan algoritma floyd warshall untuk menentukan jalur terpendek dalam pengiriman barang. *JURIKOM (Jurnal Riset Komputer)*, 3(6).
- Hutabarat, D. T. H., Salam, A., Zuwandana, A., al Azmi, C., Wijaya, C. R., Darnita, Tania, I., Lubis, L. K. A., Sitorus, M. A. P., Adawiyah, R., & Sinaga, R. (2022). Analysis Of The Implementation Of Law In Every Level Of Society In Indonesia. *Policy, Law, Notary and Regulatory Issues (POLRI)*, 1(2), 9–14. <https://doi.org/https://doi.org/10.55047/polri.v1i2.80>
- Imaningrum, S. D. (2019). *Penafsiran Hukum. Teori dan Metode*. Sinar Grafika, Jakarta.
- Iqbal, A. R. (2020). *Sanksi Pidana Terhadap Pelaku Pembunuhan Yang Dilakukan Oleh Anak Dibawah Umur Menurut Hukum Pidana Anak Di Indonesia (Studi Kasus Putusan Nomor 12/Pid. Sus Anak/2016/PN. Mtr)*. Universitas Muhammadiyah Mataram.
- Iskandar, Umami, A., & Fadilla, D. (2021). Analysis Related To Judges' Considerations In The Immediate Decision Of Criminal Actions Against Children. *Policy, Law, Notary*

- and Regulatory Issues (POLRI)*, 1(1), 57–64.
<https://doi.org/https://doi.org/10.55047/polri.v1i1.32>
- Kamil, A. (2012). Filsafat kebebasan hakim. *Jakarta: Kencana*.
- Marbun, R. (2012). *Kamus Hukum Lengkap: mencakup istilah hukum & perundang-undangan terbaru*.
- Moeljatno, A.-A. H. P. (2008). *Penerbit Rineka Cipta*. Jakarta.
- Novira, M., & Marlina, M. (2013). Kebijakan penanggulangan kejahatan terhadap anak pelaku tindak pidana dari perspektif undang-undang Republik Indonesia Nomor 11 Tahun 2012 tentang sistem peradilan pidana anak. *Jurnal Mahupiki*, 1(1).
- Rahardjo, S. (2009). *Penegakan Hukum: Suatu Tinjauan Sosiologis*.
- Sembiring, A. (2017). *Penerapan Sanksi Pidana Terhadap Anak Pelaku Pembunuhan yang Disertai Mutilasi dari Persepektif Hukum Pidana dan Kriminologi (Studi Kasus NO. 774 K/PID. SUS/2015)*.
- Supriadi, S. H. (2019). *Etika dan Tanggung Jawab Profesi Hukum di Indonesia*. Sinar Grafika.
- Waluyadi. (2009). *Hukum Perlindungan Anak*. Mandar Maju.

APPLICATION OF CRIMINAL SANCTIONS AGAINST CHILDREN AS A PERPETRATORS OF ABUSE THAT CAUSE DEATH FROM THE JUVENILE CRIMINAL JUSTICE SYSTEM PERSPECTIVE

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