



Review of Restorative Justice on Children Which Are Victims of Domestic Violence in the Jurisdiction of the Samarinda City Police Office

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<http://dx.doi.org/10.47814/ijssrr.v8i6.2686>

Abstract

Children are very vulnerable to becoming victims of criminal acts and because of their incompetence, children are not yet able to determine their destiny properly so they still depend on their parents and need protection. However, it is not uncommon for children to become victims of violence from their biological parents. The issues raised concern the form of legal protection for children who are victims of violence by their parents and the legal consequences for parents who commit violence against their biological children. The type of research used is empirical research. The problem approach used is a qualitative approach using direct research in the field by conducting interviews at the police institution to obtain information so that the data obtained is by expectations. The results of the study indicate that legal protection for children who are victims of violence by their biological parents is provided with medical assistance in the form of examination by a doctor a Visum et Repertum is carried out and the suspect is detained for examination purposes. The legal consequences for the suspect, namely parents who commit violence against their biological children, are subject to a maximum prison sentence of 3 years and 6 months and/or a maximum fine of IDR 72,000,000.00 and the sentence is increased by one-third of the provisions because it was carried out by the biological parents, by Article 80 Paragraph (1) and Paragraph (4) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. However, in this case example, mediation was carried out in the Samarinda City Police Resort area by resolving the case with Restorative Justice.

Keywords: *Legal Protection; Violence Against Children; Restorative Justice*

1. Introduction

Children as part of the younger generation are the successors of the ideals of the nation's struggle as well as human resource capital for national development. Legal factors that should be able to provide

guarantees of protection for children's human rights, in reality, are still far from reality, or often corner children as victims of violence.

Violence against children does not only occur in the social environment of society but can also occur in the family sphere and what is sad is that often the perpetrators of violence are their biological parents. Children are very vulnerable to becoming victims of criminal acts because of the incompetence of children who are not yet able to determine their destiny properly. They are still dependent on their parents so children still need protection. Violence is inappropriate behavior that results in physical, psychological, or financial losses or dangers experienced by individuals or groups due to physical violence that can result in such losses. Community culture considers violence to be able to educate children and is a common or reasonable thing because it is done in the name of education to make children better and not spoiled [1].

Children who are affected by violence will become quiet, some children become aggressive. A similar case also occurred in the Samarinda City Police Resort area, where there was violence against children committed by parents against their biological children. This was done for various motives, one of which was the fault of both parents but was vented on the child. The case that occurred was that the victim was beaten by his father because he was having problems with his wife, so the father vented his anger by beating his child. Legal provisions related to threats to anyone who commits violence against children have been regulated in Article 80 of Law Number 35 of 2014 Amendment to Law Number 23 of 2002 concerning Child Protection, which states that anyone who violates the provisions as referred to in Article 76C, shall be punished with imprisonment for a maximum of 3 (three) years 6 (six) months and/or a maximum fine of Rp72,000,000.00 (seventy-two million rupiah). Violence against children often occurs due to a lack of understanding from parents in guiding children. The paradigm that has developed in our society still considers children to be objects that must be fostered, not subjects, so children often become victims of violence by parents who should protect their children.

This study focuses on legal protection for children as victims of domestic violence through a restorative justice approach so that the formulation of the problem in this study is how is the legal protection for children as victims of domestic violence through a restorative justice approach and what are the legal consequences for parents who commit violence against their biological children in the Samarinda City Police Jurisdiction. The purpose of the study is to conduct a study on the form of legal protection for children who are victims of violence by parents; and the legal consequences for parents who commit violence against biological children in the Samarinda City Police Jurisdiction.

2. Basic Framework of Theory

2.1. Legal Theory

Legal theory is a science that studies the concept of law and legal systems and their relationship in the real world. Legal theory explains by organizing and systematizing the problems discussed [2]. Legal theory is a legal perspective that analyzes or conducts a critical, in-depth examination of aspects of legal phenomena in reality in life that provides a structure of thought regarding what is faced, to understand the law itself more deeply. Bruggink stated that legal theory is all statements that are interrelated with the conceptual system of legal rules and decisions and the system is for the most part positive [3].

2.2. Legal Protection Theory

According to [4] legal protection is the protection of dignity and honor, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. There are two forms

of legal protection for the people based on the means, namely preventive protection, where the people are allowed to submit their opinions before the government's decision gets a definitive form to prevent disputes; and repressive protection aims to resolve disputes. Legal protection is a guarantee given by the state to all parties to be able to exercise their legal rights and interests in their capacity as legal subjects.

According to [5], legal protection is various legal efforts that must be provided by law enforcement officers to provide a sense of security; both mentally and physically from disturbances and various threats from any party.

Indonesia as a state of law based on Pancasila must provide legal protection to its citizens. Legal protection will give birth to the recognition and protection of human rights in their form as individual beings and social beings within the framework of the Unitary State of the Republic of Indonesia which upholds the spirit of family to achieve common prosperity.

2.3. General Overview of Criminal Law

2.3.1. Definition of Criminal Law

The term criminal law is a translation of the Dutch word strafrecht. The word 'straf' means criminal and the word 'recht' means law.

The meaning of criminal law from several legal experts [6] is as follows: W.L.G. Lemaire stated that criminal law consists of norms containing obligations and prohibitions which (by the legislator) have been linked to a sanction in the form of punishment, namely a special suffering. Furthermore, W.F.C. Van Hattum stated that criminal law is a whole of the principles and regulations followed by the State or other general legal community where they, as the maintainers of public order, have prohibited acts that violate the law and have linked violations of their regulations to special suffering in the form of punishment.

Criminal law is a legal regulation regarding criminal acts. The word criminal means something that is criminalized, namely by the authorized agency it is delegated to an individual as something unpleasant to feel and also something that is not delegated every day [7].

2.3.2. About Criminal Acts

The term criminal act is used as a translation of the term 'strafbaar feit' or 'delict'. Criminal law books and criminal law regulations in general in Indonesia use the term criminal act. According to [8], what is meant by a criminal act can be put forward by several expert views, including Simons explaining that Strafbbaar feit is behavior (handling) that is threatened with a criminal offense that is against the law related to mistakes and is carried out by a person who is capable of being responsible. Van Hamel stated that Strafbbaar feit is the behavior of a person (menselijke gedraging) formulated in the wet that is against the law and that should be punished and carried out with mistakes.

Strafbbaar feit or criminal act is an act that is prohibited by a legal rule, the prohibition of which is accompanied by a threat (sanction) in the form of a certain penalty for anyone who violates the prohibition [9].

2.3.3. Elements of Criminal Acts

Criminal acts have several elements, namely elements that must be present and proven to determine that an act is a criminal act. According to [8], the doctrine of the elements of criminal acts consists of subjective elements, which are elements that come from within the perpetrator. The principle of criminal law states that there is no punishment if there is no error. The error referred to here is an error caused by intent (intention/opzet/dolus) and negligence (negligence or schuld). Intention consists of 3

forms, namely: intent as an intention, intent with a certain awareness, and intent with awareness of the possibility. While negligence is a lighter form of error than intent. Negligence consists of 2 forms, namely: not being careful, and being able to predict the consequences of the act; and the objective element is an element from outside the perpetrator which consists of: human actions (acts and omissions), the consequences of human actions, circumstances, and the nature of being punishable and the nature of being against the law. All elements of the offense (subjective and objective) are one unit, if even one element is not proven it can result in the defendant being acquitted by the court.

2.3.4. Punishable Nature

In legal science, there are two dimensions of unlawful nature (*wederrechtelijkeheid*), namely material unlawful nature (*materiële wederrechtelijkeheid*) and formal unlawful nature (*formale wederrechtelijkeheid*) [10]. Material unlawful nature is a broad unlawful nature whose elements are not only against written law but also include unwritten law, while formal unlawful nature is only bound by written rules so that, as a consequence, an act can be said to be a criminal act if it is regulated in the formulation of a criminal act, material unlawful nature is divided into material unlawful nature in negative function and positive function, which specifically material unlawful nature in negative function means that even though the act fulfills the elements of a crime but does not conflict with the sense of justice of society, then the act is not punishable. As for material unlawful nature in positive function, it means that even though the act does not fulfill the elements of a crime, if the act is considered reprehensible because it does not comply with the sense of justice or norms in society, then the act can be punished [11]. The conditions for being able to have the nature of being punishable or accountable according to GA. van Hamel are that a person's soul must be such that he understands or is aware of the value of his actions, a person must be aware that his actions are prohibited according to social norms, and a person must be able to determine his will regarding his actions.

2.3.5. Punishment

In criminal law, punishment is directed at individuals who commit criminal offenses. Punishment according to Article 10 of the Criminal Code (KUHP) consists of principal punishment and additional punishment. Principal punishment is the death penalty, imprisonment, detention, and fines. Additional punishment is the revocation of certain rights, confiscation of certain goods, and announcement of the judge's decision.

Punishment is imposing torture on someone for a violation or mistake as a reward or recompense [12]. Emile Durkeim, punishment is a way to prevent various violations of the rules. Education punishes the child not only so that the child does not repeat his mistake but also to prevent other children from imitating him [13].

Punishment in psychological terms is a method used at the time of a detrimental situation or unpleasant experience carried out by someone intentionally bringing down others. It is generally agreed that punishment is discomfort (unpleasant atmosphere) and bad or ugly treatment [14].

2.4. General Overview of the Indonesian National Police

2.4.1. Definition of the Indonesian National Police

Domestic security is the main requirement to support the realization of a just, prosperous, and civilized civil society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In upholding human rights, maintaining domestic security through efforts to organize police functions that include maintaining public security and order, law enforcement, protection, shelter, and service to the community is carried out by the Indonesian National Police as a state apparatus assisted by the

community. Law Number 2 of 2002 concerning the Indonesian National Police. Article 1 number 1 explains that 'Police are all matters relating to the functions and institutions of the police by laws and regulations'. Article 1 number 14 states that the Chief of the Indonesian National Police, hereinafter referred to as the Chief of Police, is the leader of the Indonesian National Police and is responsible for organizing police functions.

2.4.2. Duties and Functions of the Indonesian National Police

The Indonesian National Police aims to realize domestic security which includes maintaining public security and order, orderly and upholding the law, providing protection, protection, and services to the community, and fostering public peace by upholding human rights. Based on Article 13 of Law Number 2 of 2002 concerning the Indonesian National Police. The main duties of the Indonesian National Police are to maintain public security and order, enforce the law, and provide protection, protection, and services to the community.

Article 34 Paragraph (1) states that the attitude and behavior of the officials of the Republic of Indonesia National Police are bound by the Code of Professional Ethics of the Republic of Indonesia National Police. It also states that every member of the Republic of Indonesia National Police in carrying out their duties and authorities must be able to reflect the personality of the Bhayangkara Negara in its entirety, namely the fighters who guard and protect the Republic of Indonesia. In addition, to devote themselves as a state law enforcement tool, whose duties and authorities are directly related to the rights and obligations of citizens, high awareness and technical skills are required, therefore every member of the Republic of Indonesia National Police must internalize and embody the ethics of the police profession which are reflected in their attitudes and behavior. The ethics of the police profession are formulated in the code of ethics of the Republic of Indonesia National Police which is a crystallization of the values contained in the Tribrata and Catur Prasatya which are based on and inspired by Pancasila. 'The main function of the police is to enforce the law and serve the interests of the general public. So it can be said that the task of the police is to prevent crime and provide protection to the community [6].

The Republic of Indonesia National Police based on Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice needs to realize the resolution of criminal acts by prioritizing restorative justice which emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a legal need of society.

2.5. Legal Review of Domestic Violence Crimes

2.5.1. Violence

Violence is the use of physical force and power, threats or actions against oneself, an individual, or a group of people (society) that results in or is likely to result in bruising or trauma, death, psychological harm, developmental disorders, or deprivation of rights. Violence is an act or form of action whether done intentionally or negligently which is conceptualized as a criminal act related to crime. Household is a matter related to family, the scope of the household consists of husband, wife, and children; people who have family relationships of husband, wife, and children because of blood relations, marriage, nursing, care, and guardianship who live in the household; and people who work to help the household and live in the household. According to the [4] definition, domestic violence is a criminal act committed by the perpetrator that results in physical, sexual, or psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or deprivation of liberty unlawfully within the scope of the household".

2.5.2. Violence Against Children

Children are one of the groups that are vulnerable to violent behavior. Humans are referred to as children by age measurement or limit. Each country is allowed to determine how old a person is categorized as a child. Violence against children is behavior that intentionally hurts physically and/or psychologically to damage, injure, and harm children. Violence against children is an act of abuse or mistreatment of children in the form of physical, emotional, or sexual harm, neglect of care, and exploitation for commercial gain for personal gain. Unlawful treatment of children results in the child's survival, dignity, or development both physically and psychologically being disrupted.

According to the 1945 Constitution, children have several rights, namely children's rights in the 1945 Constitution are guaranteed in Article 28B paragraph (2) which states that every child has the right to survival, growth, and development, and has the right to protection from violence and discrimination. This article emphasizes the importance of protecting children from the womb until they reach the age of 18.

2.6. Factors Influencing Violence Against Children

Violence against children has various forms, in general violence against children can be in the form of physical, sexual, or psychological violence, and neglect of children. Parents often commit acts of violence against children, and although the goal is to educate, most parents take the wrong steps, as a result, many children experience trauma, and child development worsens due to the violence given when they were young [4]. Violence against children can occur in the home environment, school, and in other places, including in cyberspace. Violence against children results in suffering from physical injuries or actions that put children at risk of serious injury and can even lead to unlawful death. According to Terry E. Lawson quoted by [15] violence against children is divided into 4 types, namely emotional abuse, verbal abuse, physical abuse, and sexual abuse.

Factors that cause or trigger violence against children can occur such as domestic violence where the child is the target of their parents who are at odds; Family dysfunction, namely the role of each parent is not in line as it should be in the family they build; violence can arise due to economic pressures that crush the family; the mistaken view that states that the position of children in the family is considered as children do not know anything; and inspired by social media and electronic media broadcasts that are spread in the wider community that have built and created violent behavior.

3. Research Method

The research method used is the normative legal research method, namely a legal research approach that examines law as a system of norms or rules, by examining laws and regulations, legal principles, doctrines, and jurisprudence as well as literature studies. This research concentrates on theoretical studies and interpretations of applicable rules and those related to the object of research.

The data collection method is a literature study in the form of books, journals, legal regulations, applicable legal principles, and information related to research on the process of resolving cases of violence against children committed by their parents (fathers) using the restorative justice method. In the application of Restorative Justice, it is hoped that there will be justice between the victim and the perpetrator.

4. Results and Discussion

4.1. Forms of Legal Protection for Children Victims of Violence by Parents in the Samarinda Police Jurisdiction

Violence against children can cause harm or danger to children physically or emotionally. Violence against children is behavior that intentionally hurts physically and/or psychologically to damage, injure, and harm children. Violence against children can also be committed by parents or their families. Parents are not allowed to use violence in educating their children, because children have children's rights that must be fulfilled. Parents are responsible for caring for, nurturing, educating, and protecting children. The community also has a role in organizing child protection, including involving community organizations and child observers. Children who are victims of criminal acts receive special protection, including rehabilitation and identity protection. Therefore, the community and family play an important role in protecting children from violence and exploitation.

Violence against children can be caused by families often quarreling, thus triggering acts of violence against children that are higher compared to families without problems. Parents may also not have psychological maturity in their marriage, so if there is a problem in the family, high emotions occur and finally the target is their child with emotions committing violence against children. It is stated by [15] that the factors causing parents to commit verbal violence in early childhood are age, knowledge, attitude, experience, and environment.

An example of a case handled in the jurisdiction of the Samarinda Police, where the violence began when the father of the victim who was also a suspect in the case wanted to meet his young child because he missed him, therefore the suspect tried to contact his wife to find out the whereabouts of his wife and child, but when contacted repeatedly by telephone, his wife always did not answer WhatsApp. The reason the wife did not want to answer the phone from her husband was that she was afraid because she always received threats of being killed if they met and when they were still in the same house they were often beaten. In this case, domestic violence has also occurred by the husband against the wife. The violence committed by the father who is also a suspect in the case hit his child on the front of the head twice based on the available evidence in the form of a video recording. The source explained that the video recording as mentioned above was made by the suspect because he was upset and his emotions could no longer be controlled because he could not contact his wife, then made a video recording containing beating his child and sent the video recording to his wife. At that time there was a witness who saw the incident, namely the younger sibling of the suspect, and confirmed the violence committed by the suspect against his child. The provision of legal protection to the victim in the form of assisting with medical examinations and psychological examinations for the child who was the victim. The medical examination of the victim was carried out by *Visum et Repertum* which aims to be valid evidence in the trial process in criminal cases, namely revealing the material truth about the incident that befell the victim.

This medical assistance/provision to children is by Article 59A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that child protection can be carried out through efforts, namely rapid handling, including treatment and/or rehabilitation physically, psychologically, and socially, as well as prevention of diseases and other health disorders; Psychosocial assistance during treatment until recovery; and Provision of social assistance for children from underprivileged families and Provision of protection and assistance in every judicial process.

The provision of legal protection for children by applicable provisions is stated in Article 80 paragraph (1) and paragraph (4) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that: in Paragraph (1) Any person who violates the

provisions as referred to in Article 76C shall be punished with imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a maximum fine of Rp72,000,000.00 (seventy-two million rupiah); and the penalty is increased by one-third of the provisions as referred to in paragraph (1), paragraph (2), and paragraph (3) if the perpetrator of the abuse is the parent. The provisions as referred to in Article 76C of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection state that any person is prohibited from placing, allowing, committing, ordering, or participating in committing violence against children.

In the Samarinda City Police Department area, the implementation of legal protection for child victims handled by the Women and Children's Service Unit is the application of Article 59A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely providing fast physical and psychological treatment by providing medical assistance to victims in the form of providing medical assistance to children who are victims who are taken to the hospital for a medical examination of Visum et Repertum and detaining their biological father as the perpetrator and threatened with the threat of a maximum prison sentence of 3 (three) years 6 (six) months and/or a maximum fine of IDR 72,000,000.00 (seventy-two million rupiah) and the criminal penalty is increased by one third of the provisions, because it was carried out by biological parents in accordance with Article 80 paragraph (1) and paragraph (4) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

4.2. Legal Consequences for Parents Who Commit Violence Against Biological Children

Children are a gift and blessing from God Almighty who have been attached to them as human beings who have full dignity and worth that must be upheld by the government or anyone else. Every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination. Children's rights are a tool to protect children from violence, discrimination, and other mistreatment. Based on the provisions of Article 13 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is stated as follows: discrimination, exploitation both economic and sexual, neglect, cruelty, violence, abuse, injustice, and other mistreatment.

Parents who do not understand the stages of child development can do actions that are prohibited by law. Physical violence or verbal violence is expressed along with emotions that can cause children to suffer mental stress. If this continues to happen, then the child will keep the memory of violence and even when they are adults will imitate the criminal behavior of their parents. The situation continues until the child becomes a parent and can also do the same thing to their children later. The legal consequences of violence against children committed by parents can be subject to criminal penalties in the form of imprisonment for a maximum of 3 (three) years 6 (six) months and/or a maximum fine of Rp. 72,000,000.00 (seventy-two million rupiah) and the criminal penalty is increased by one-third of the provisions because it was committed by biological parents by Article 80 paragraph (1) and paragraph (4) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The legal settlement process against the biological father or the suspect is carried out by detention for 21 days. The detention is based on a report made by the wife. However, during the process, the reporter or wife withdrew the report and chose to resolve the matter through Restorative Justice.

The implementation of Restorative Justice can be carried out based on the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. It begins by submitting a written application letter to the Samarinda City Police. This approach aims to present a more humane role for the state and law enforcement officers, as well as to explore the values of human dignity. However, Restorative Justice cannot be applied to several criminal acts, such as crimes that threaten state security, corruption, crimes against people's lives, environmental

crimes, crimes committed by corporations, and so on. The Samarinda City Police also provides counseling to the parents of victims to provide insight into the negative impacts of violence against children on the psychological aspect quite deeply. The child's psyche will experience short-term and long-term disorders that can result in mental disorders and also interfere with the child's growth. The short-term experience by children is usually trauma, the child's mentality will tend to be a person who is always anxious, not confident, and can be afraid if they see other people. Children will have difficulty building relationships or interacting with others, because of prolonged trauma, and this can cause depression. Based on the description above, violence committed by parents of their biological children based on the Child Protection Law, the parents, namely the father as the perpetrator of the crime who commits violence against his biological child, are threatened with imprisonment for a maximum of 3 (three) years 6 (six) months and/or a maximum fine of IDR 72,000,000.00 and the penalty is increased by one-third of the provisions because it was committed by the biological parents by Article 80 paragraph (1) and paragraph (4) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, but in this case the perpetrators were the biological parents, so mediation was carried out in the jurisdiction of the Samarinda City Police Resort by carrying out Restorative Justice or restorative justice based on the Regulation of the Republic of Indonesia Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. As a preventive measure and repetition of the violent crime, there is the provision of education and counseling to the victim's parents. The results of other studies reported by [16] that the restorative justice approach to protecting victims of domestic violence is by prioritizing healing efforts, moral learning, participation, community attention, dialogue, forgiveness, responsibility, and making changes as regulated in laws and regulations. Although it still seems that the application of restorative justice in handling domestic violence cases is not optimal, it is hoped that with this approach method, the rights of domestic violence victims can be perfectly fulfilled. Furthermore, it was reported [17] that the application of Restorative Justice in resolving domestic violence cases at the Tangerang City Metro Police has been running well according to existing regulations but has not been optimal, which is because not all cases that come in can be resolved by choosing the Restorative Justice resolution path; obstacles to the application of restorative justice are the passive nature of investigators, the ego of the parties who want to win alone, the demands of the reporter are not met and the reported party does not meet during the deliberation.

5. Conclusion

Based on the results of the study and discussion, the following conclusions were drawn:

1. As in Article 59A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, one of the legal protections is to provide fast physical and psychological treatment by providing medical assistance to victims in the form of providing medical assistance to children who are victims who are taken to the hospital to be examined by a doctor and also a Visum et Repertum. The perpetrator, namely his biological father, was detained and examined by the police in the jurisdiction of the Samarinda Police.
2. The legal consequences for parents who commit violence against their biological children can be sanctioned with the threat of a maximum prison sentence of 3 (three) years 6 (six) months and/or a maximum fine of IDR. 72,000,000.00 and the criminal penalty is increased by one-third of the provisions because it was carried out by biological parents by Article 80 paragraph (1) and paragraph (4) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. However, in this case example, mediation or peace was carried out, namely a Restorative Justice settlement, between the child who was the victim and the biological father as the perpetrator of the crime of violence.

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