

Criminal Policy In Countermeasures Criminal Acts Of Domestic Violence Stairs To Children

Sumartini Dewi^{1*}, Juhari², Kastubi³

¹ Faculty of Law, University of 17 August 1945 Semarang, Indonesia

* Corresponding author:

Email: sumartini.dewi@gmail.com

Abstract.

Children are a bounty that must be maintained and protected by parents, families, and countries. Children must also get welfare because children are the next generation of the nation. The violence that occurs in children makes a problem that must be taken and resolved seriously because it impacts the growth and development of children. One of them is child abuse that occurs in households involving people closest to the child. It is essential to know what factors are the background to the criminal acts of domestic violence against children and how illegal policies in tackling domestic violence against children. This research uses normative juridical types with descriptive-analytical research specifications using primary and secondary data sources and qualitative analysis methods. The settlement of domestic violence crimes needs to get special attention and provide protection to children as victims of domestic violence. The Criminal Code only regulates the crime of violence in general in the Criminal Code, there are weaknesses, and to overcome these weaknesses. The violence against children occurs due to low educational factors, unhealthy environments, economic factors, and parents who vent anger at children. Applying protection to children who experience domestic violence must be enforced to protect children, both by penal and non-penal efforts.

Keywords: Criminal policy, Prevention of violence, Children, Child protection

1. INTRODUCTION

In human life, criminal acts can occur in the closest social environment such as the family environment. Criminal acts can be committed by anyone and anywhere regardless of the boundaries of the place and the subject of the perpetrator, including in the family or household environment [1]. Domestic violence is often carried out by parents or people who live within the scope of the household against children as victims, based on the provisions of Article 89 of the Criminal Code it can be seen that violence is an act by using force or physical strength illegally, making people helpless or fainting, for example hitting with the hands or with all kinds of weapons, kicking, kicking and so on [2].

A child who is a gift that must be guarded and protected by parents, family, and the state and the child must also obtain prosperity in his life. The Child Protection Act [3] is a concrete rule that was designed and ratified and explains to the public that not only adults but children must also get protection because they have rights that should be respected [4].

Basically, the relationship between humans in everyday life on the one hand is very positive because humans are interdependent on each other in meeting their needs.

But on the other hand, this relationship sometimes creates a conflict of interest which leads to crime or violence from one party to another (the victim) [5].

In criminal law [6], the losses suffered by children as victims of violent crimes have not been concretely regulated, meaning that criminal law provides protection to children as victims [7], more of an abstract protection or indirect protection, there are various formulations of criminal acts in legislation [8]. The system of sanctions and criminal responsibility is not focused on direct and concrete victim protection, but only indirect and abstract victim protection [6].

Therefore, it is necessary for criminal policy to carry out a countermeasure in completing efforts so that the number of domestic violence crimes can be suppressed. Child Protection Efforts need to be implemented as early as possible, from the fetus in the womb until the child is 18 years old [9]. Starting from the conception of child protection that is complete, comprehensive and comprehensive, the child protection law places the obligation to provide protection to children based on the principles of non-discrimination [10], the best interests of the child, the right to life, survival and development as well as respect for the opinion of the child. In carrying out the guidance, development and protection of children, the role of the community is needed, either through child protection institutions, religious institutions, non-governmental organizations, community organizations, social organizations, the business world, mass media, or educational institutions [11].

The State of Indonesia is a constitutional state where democracy uses Pancasila as the basis of the state [12], this provision is clearly and unequivocally included in the general explanation of the 1945 Constitution, which states that to promote public welfare, educate the nation's life, and is not based on mere power. This means that within the State, including it, the government and other state institutions in carrying out any action must be based on law and can be legally accounted for, according to Law number 23 of 2002 concerning child protection which has now been amended by Law No. - Law Number 35 of 2014, which states that a child is a person who is not yet 18 years old, including children who are still in the womb and child protection according to Law Number 35 of 2014 is all activities to guarantee and protect children and their rights. their rights to be able to live, grow, develop and participate optimally in accordance with human dignity and protection, as well as protection from violence and discrimination, while protection according to Law Number 23 of 2004 concerning the elimination of domestic violence is all efforts aimed at provide a sense of security to the victim action by the family, advocates, social institutions, police, prosecutors and courts or other parties, both temporarily and based on court decisions, this aims to achieve material truth according to law and criminal justice can be carried out in accordance with the current situation and conditions of society . The Criminal Code does not recognize the term domestic violence, this understanding is important to put forward considering the ideology of family harmonization adopted by the community, so far it does not take domestic violence seriously or considers the phenomenon of domestic violence to be a private matter.[13]

II. METHODS

The approach method used in this study is a normative juridical approach, namely research conducted by examining library materials or secondary data. His normative juridical approach or analysis is often called documentary research to obtain secondary data in the legal field. The research specification used is in the form of an analytical descriptive pattern, a study that aims to describe the object of research, namely to provide an overview of criminal policies in overcoming criminal acts of domestic violence against children as victims. In this activity, the author uses qualitative methods to analyze existing data problems associated with theories and concepts regarding the settlement of crimes of violence against children. With this method, it is hoped that an answer or a clear picture of the main issues to be discussed will be obtained.

III. RESULT AND DISCUSSION

Criminal law policy is essentially an effort to realize criminal laws and regulations to suit the circumstances at a certain time (*ius constitutum*) and in the future (*ius constituendum*). The logical consequence is that criminal law policy is identical with "reforming criminal law legislation", but actually the definition of criminal law policy is in a narrow sense. It can be explained that criminal law as a legal system consisting of culture, structure and substance of law, because the law is part of the legal substance, the renewal of criminal law, in addition to updating the legislation invitation, also includes the renewal of basic ideas and knowledge of criminal law. Viewed from the perspective of legal politics, basically criminal law politics tries to make and formulate good criminal legislation. The penal policy is an act related to:[14]

- a. Government efforts to tackle crime with criminal law
- b. Formulate criminal law to be by the conditions of society
- c. Government policy to regulate society with criminal law
- d. Use criminal law to regulate society to achieve more meaningful goals.

Implementing criminal law politics means that it contains efforts that lead to changes, improvements and renewal of criminal law not only for the present, but also towards the future, therefore discussing the politics of criminal law including prospects and anticipation efforts in order to make legal regulations better punishment. Regarding the prospect of criminal policy, it includes the issue of criminal law policy that is currently in effect (*ius constitutum*) and criminal law policy for the future or aspired law (*ius constituendum*).

Violence often occurs against children which can be destructive, dangerous and frightening to children.[15] Children who are victims of violence suffer losses, not only material, but also immaterial such as emotional and psychological shocks, which

can affect the child's future life. Perpetrators of acts of violence against children can be parents, family members, the community, and even the government itself (law enforcement officials). Violence often occurs against vulnerable children. Called vulnerable because the child's position is less favorable.

In the Law of the Republic of Indonesia number 11 of 2012 concerning the Juvenile Criminal Justice System, the age limit for children is after the age of 12 years and not yet 18 years old and not married. It is said after the age of 12 because it can be considered responsible, therefore for those who are not yet 18 years old, but have Once married, it cannot be categorized as a child.

The United Nations Declaration on Human Rights states that "Everyone is born with equal rights and dignity." This affirmation is a symbol of a social life with a vision of the need to respect the humanity of everyone regardless of race, color, religious and political beliefs, language and gender. Human rights are rights that are inherent naturally in humans since humans are born and without these rights cannot grow and develop as human beings as a whole.

Without these rights, humans cannot develop talents and fulfill needs, including civil and political rights, socio-economic rights, cultural rights and the right to develop. Children are entitled to protection of human rights. Violence against children is a violation of human rights which can be in the form of : Right to life, Right to equality, Right to liberty and security of person, The right to equal protection before the law, The right to obtain the best possible physical and mental health services, The right to decent work and good working conditions, Right to further education, The right not to be subjected to ill-treatment or other forms of cruelty, inhuman or arbitrary treatment or torture.

Factors That Lead to the Occurrence of Crimes of Violence Against Children. There are several factors that lead to violence against children, namely:

1. Religion Factor

Religious norms are an important and basic element in human life, besides that they are also the norms of the highest value in society. These religious norms that lead a person to a good and right path, norms show what is prohibited and required by society, which is good and which is bad. Thus, if a person truly understands and carries out his religious norms, then he will become a good human being and not behave badly. However, if religion is used as a symbol and is not understood and carried out with the norms contained in the religion, then a person will become weak in his faith and easily fall into things that are contrary to the norm.

2. Educational factor

Education consists of two, namely formal education and non-formal education. Formal education is school education in addition to providing knowledge, also through teachers providing role models in good behavior, non-formal education in this case fostering children outside of school. Education in

schools in addition to having an influence on the attitudes, character, personality, and emotions of students, where this will be brought into the midst of society in formal schools, children have been given very minimal material, because data on creativity and intelligence Children must be measured by the curriculum that has been determined by the school. On the other hand, children are always required to fulfill all the wishes of their parents and teachers in formal schools, but it turns out that they have become victims of physical and mental violence by their families, both from their parents' families and from other family members as well as by the teachers in their schools.

This culture has been maintained by the Indonesian people until now. Children are only objects so that all parents' wishes are fulfilled by children under the pretext of protecting and protecting children, many parents commit violence and exploitation of children, cultures such as This has resulted in an increase in cases of abuse and violence against children.

3. Environmental Factors

Family environment, the family is the first and foremost institution in carrying out the process of personal socialization of children. The factors that cause acts of violence as a result of the family environment are from a messy household, if the house is constantly filled with conflicts, eventually divorce and there are various difficulties for all family members, especially children who become victims. The children do not know which side to take, the father or the mother, as a result, the children suffer greatly, are not calm in studying, are not calm to stay at home, the children are ashamed and feel sad, and in the end the children become victims. Criminal, immoral behavior from parents or family members can have a contagious influence on children, for example playing with women, corruption, gambling, drunkenness, acting arbitrarily, chaotic family situations without rules and not knowing discipline will affect the soul children, automatically and unconsciously children will have the customs and bad behavior of parents and adults in their family environment.

The school environment is the second education after the family. In the context of fostering students towards adulthood, sometimes schools are also the object of the emergence of processes leading to violence, for example brawls committed by students, all of this stems from behavioral norms in schools and the level of interaction between school students with each other. mocked so that a fight broke out.

The community environment or the surrounding environment is not always good and beneficial for the education and development of children, the community environment is sometimes inhabited by adults and criminal and anti-social youth, which can stimulate the emergence of bad emotional actions in children who are still mentally unstable.

4. Poverty factor

Poverty can result in the sale of children by their own parents for the purpose of meeting daily needs or for commercial sex purposes which have the potential to cause acts of violence. Besides poverty, the consumptive lifestyle is also noted as one of the things that seduces children, especially those who live in big cities.

Child victims of sexual exploitation tend to be potential perpetrators of exploitation, in this case it should be noted that boy victims of exploitation also face the same risk, through this kind of situation a pathway is formed towards an intergenerational pattern in terms of exploitation of children.

5. Age Factor

The perpetrators of criminal acts of violence against minors are mostly carried out by teenagers, namely someone who has exceeded the age of 18 years to 21 years. From childhood to adulthood, humans always experience physical and spiritual changes, so that if they commit a crime, especially violence, it will always be in accordance with the development of their mind or physical strength.

This can happen because at that time a person's mental condition was not stable, full of courage and violence. They are easily influenced by the environment at that time and difficult to control emotions.

6. Cultural Factor

In the culture of Indonesian society, children still do not have a place or are still not considered as independent individuals, children are not yet able to be legally responsible for their actions, but this should instead be used as a basis for protecting children from all forms. violence from exploitation. Talking about the culture of violence against children in Indonesia, we will return to the history of the Indonesian nation during the feudalism and colonial period of the Dutch East Indies. At that time, the Dutch East Indies government really maintained the teachings of feudalism to stem the progress of the Indonesian people's thinking, it was not allowed for freedom of thought, so this would endanger the existence of the position of the Dutch East Indies. With freedom of thought, the Indonesian people will know all the rottenness and oppression carried out by the Dutch East Indies government in colonizing our country, so since the children of the Indonesian nation have been instilled not to have the freedom to think and act according to their wishes so they only obey and should not help if against all the wishes of his parents let alone the government at that time.

In the life of Indonesian society, children are always objects that can be arranged at will by older people, especially in the family, children cannot and should not oppose this treatment, because if they dare to oppose, let alone fight, violence will be what they will get. In classical Indonesian culture, children had almost no right to choose what they would do in life.

The results of this study should be input for parents to be more careful in educating their children. This is because childhood experiences are very imprinted and have an impact on adulthood. Individuals who have grown up might demand their partner to also pamper them.

7. The victim factors

Sometimes the victim plays a role in the occurrence of criminal acts of violence against children, for example, the victim is conspicuous in decoration, excessive use of jewelry, this causes someone to commit a crime against the victim by asking forcibly and accompanied by violence if the victim does not give the jewellery. Perpetrators of violent crimes by themselves must accept the punishment that has been decided by the judge, namely serving a sentence for a certain time, then several development processes at the Correctional Institution automatically reduce the freedom they have, and the perpetrator will suffer shame, and get stigma from the community, so that it is difficult in looking for work, the victim will also suffer losses due to physical suffering and psychological suffering (fear).

Criminal Policy in Handling Criminal Acts of Domestic Violence Against Children. The handling of criminal acts of domestic violence against children can be carried out in the following ways: non-penal prevention and penal control.

1. Non-Penal Countermeasures, including

a. Individual and social handling

Individual countermeasures are carried out by making improvements to perpetrators of violent crimes, while social countermeasures are general countermeasures. In individual and social countermeasures include family discipline, school discipline, environmental discipline, road discipline.

b. Preventive countermeasures

The methods used to prevent criminal acts of violence against children are through family discipline, school discipline, environmental discipline and road discipline, all of which aim to enforce community discipline. Involving community members in social activities is very helpful in preventing crime, because here it is instilled and taught love for fellow human beings. Dialogue between children and parents is a golden bridge in the creation of a safe, peaceful and happy family so that children grow up normally and healthily, avoiding despicable acts.

c. Countermeasures by Non-Governmental Organizations

Countermeasures a number of Non-Governmental Organizations are known to carry out several program agendas related to child abuse and violence. However, the number of people involved in the direct response program to this problem is very limited. A non-governmental organization program that is known to provide direct assistance to children who are victims of violence is:

- 1) Strengthen existing efforts to provide educational opportunities to children, especially basic education.
 - 2) Develop and improve and implement gender-sensitive social, economic and national policies and programs to assist children who are vulnerable to abuse and violence and to encourage families and communities to refrain from acts that lead to acts of violence, with special attention paid to harmful cultural practices for children which have a very bad impact on the future of the child.
 - 3) Promote ways to strengthen family ties for the creation of a healthy environment for child development and promote children's rights in family education and family development guidance, including understanding that both parents are very responsible in terms of education and child care, as well as conducting special interventions to prevent a family environment that abuses children.
 - 4) Conducting campaigns taking into account the momentum of the National Child Protection Movement to encourage friendly and protective attitudes towards children.
 - 5) Increasing awareness in children, families and communities about the consequences of violence and also reducing practices and values in society that harm children.
 - 6) Provide awareness to the community through approaches or with social activities.
- d. Countermeasures by the Government

The steps taken by the Government in responding to the increasing cases of violence against children in Indonesia include:

- 1) The issuance of Law Number 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, which tends to refer to the Convention on the Rights of the Child (CRC) so that it can be in accordance with international developments regarding the handling of cases involving children.
- 2) Establishment of a Special Service Room Unit (RPK) by the Indonesian National Police. RPK in carrying out its duties cooperates with hospitals, forensic laboratories, psychologists, legal advisors and non-governmental organizations. The government, at the urging of the community and non-governmental organizations concerned with children's problems, has also issued several regulations to stem and overcome the problem of violence against children, both for the purpose of being a laborer and for the purpose of sexual exploitation.
- 3) Strengthening cooperation and interaction between institutions between sectors including non-government institutions, religious groups, academics and other sectors in civil society, including institutions dealing with human rights.

- 4) Strengthening law enforcement, namely the existence of Law Number 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection.
- 5) Provide social, medical and psychological counseling as well as other assistance to children who are victims of violent crimes and from a point of view that encourages the growth of a sense of personal honor, self-esteem and children's rights. Doing non-punitive and humane ways so that the laws that children have to follow do not exacerbate their trauma about violence.

2. Penalty Countermeasures

Efforts to overcome by means of penal (criminal law enforcement), are very effective to be used as a shock therapy for perpetrators not to commit violence against children. Penal efforts with the application of criminal sanctions, both imprisonment and fines have not been able to guarantee that the perpetrators will become a deterrent. Efforts to prevent the occurrence of domestic violence can be carried out in various ways, such as:

- a. Provide criminal sanctions in accordance with the crime committed to the suspects.
- b. Giving punishment in accordance with Law No.23 of 2004 concerning the Elimination of Domestic Violence, everyone who commits domestic violence is threatened with a maximum sentence of 20 years and a minimum of 3 years, while if imposed a maximum fine of 500 million and a minimum of 5 million according to the weight light punishment.
- c. According to Law No. 23 of 2002 concerning Child Protection, anyone who commits violence against children is threatened with imprisonment of 20 years and a minimum of 3 years and 6 months or a maximum fine of 500 million and a minimum of 60 million.

IV. CONCLUSION

The factors that lead to criminal acts of violence against children are religious factors, educational factors, environmental factors, poverty factors, age factors, cultural factors, victim factors. Criminal law policies in tackling violence against children can be carried out by Non-Penal Countermeasures, including individual and social countermeasures, preventive countermeasures, non-governmental organizations countermeasures, government countermeasures. Penal countermeasures, with repressive countermeasures, are ways of law enforcement officers in the context of crime prevention by providing criminal sanctions for perpetrators of criminal acts with the aim of awakening the perpetrators as well as improving the morals of the

perpetrators of criminal acts so that they no longer repeat their actions and if they leave the correctional institution, the perpetrators will be acceptable to society.

REFERENCES

- [1] E. S. & B. D. B. Rynaldo, "Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Kekerasan Dalam Rumah Tangga," *Law and Justice*, vol. 5, no. 41, 2016.
- [2] Maidin Gultom, *Perlindungan Hukum Terhadap Anak dan Perempuan*. Bandung: Refika Aditama, 2014.
- [3] A. N. Fitri, A. W. Riana, and M. Fedryansyah, "Perlindungan Hak-Hak Anak Dalam Upaya Peningkatan Kesejahteraan Anak," *Prosiding Penelitian dan Pengabdian kepada Masyarakat*, vol. 2, no. 1, 2015, doi: 10.24198/jppm.v2i1.13235.
- [4] M. Lie, E. Novianti, G. Clarissa, and R. N. Shyfa, "Penegakan Hukum Terhadap Pelaku Pelecehan Seksual Dibawah Umur (Studi Kasus : Pelecehan Seksual di SMP X)," *Jurnal Hukum Adigama*, vol. 4, no. 1, 2021.
- [5] C. Wasiati, "Partisipasi Orang Tua Terhadap Perlindungan Anak Sebagai Suatu Bentuk Perlindungan Hak Asasi Manusia," *Widya Pranata Hukum : Jurnal Kajian dan Penelitian Hukum*, vol. 3, no. 1, 2020, doi: 10.37631/widyapranata.v3i1.93.
- [6] F. Ananda, "Penerapan Diversi Sebagai Upaya Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana," *Jurnal Daulat Hukum*, vol. 1, no. 1, 2018, doi: 10.30659/jdh.v1i1.2566.
- [7] J. Junaidi, "Perlindungan Hukum Terhadap Hak Anak di Indonesia," *Journal of Law, Society, and Islamic Civilization*, vol. 8, no. 1, 2021, doi: 10.20961/jolsic.v8i1.48698.
- [8] A. Prasetyo, "Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana," *Mizan: Jurnal Ilmu Hukum*, vol. 9, no. 1, 2020, doi: 10.32503/mizan.v9i1.1054.
- [9] I. M. Firdauz, "Penyelesaian Perkara Anak Sebagai Pelaku Tindak Pidana Melalui Pendekatan Keadilan Restorative Justice," *Jurnal Panorama Hukum*, vol. 4, no. 2, 2019, doi: 10.21067/jph.v4i2.3950.
- [10] B. Purnomo, Gunarto, and A. Purnawan, "Penegakan Hukum Tindak Pidana Anak Sebagai Pelaku Dalam Sistem Peradilan Pidana Anak (Studi Kasus Di Polres Tegal)," *Jurnal Hukum Khaira Ummah*, vol. 13, no. 1, 2018.
- [11] T. I. F. D. Patepa, "Perlindungan Khusus Bagi Anak Menurut Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," *LEX ET SOCIETATIS*, vol. 8, no. 4, 2020, doi: 10.35796/les.v8i4.30914.
- [12] I. N. Bagiastira, "The Ontological of State of Law of Pancasila as The Basis of Welfare State in Indonesia," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, vol. 9, no. 4, 2020, doi: 10.24843/jmhu.2020.v09.i04.p03.
- [13] R. D. Irianti, "Kekerasan Dalam Rumah Tangga Antara Mempertahankan Keutuhan Keluarga Dan Sanksi Pidana Menurut Undang -Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," *Pamulang Law Review*, vol. 3, no. 2, 2020.
- [14] Lilik Mulyadi, *Bunga Rampai Hukum Pidana Perspektif Teoritis dan Praktik*, Ed. 1. Cet. Bandung: Alumni, 2012.
- [15] N. A. Suryani, "Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Penganiayaan Ditinjau Dari Undang-Undang Perlindungan Anak," *Media of Law and Sharia*, vol. 2, no. 2, 2021, doi: 10.18196/mls.v2i2.11493.