



THE CRIMINAL OFFENCE OF CHILD-ON-CHILD ABUSE WITH A FATAL OUTCOME

Cut Firna Salsalia¹, Rizanizarli²
^{1,2)} Fakultas Hukum, Universitas Syiah Kuala

Article Info

Received : 09/11/2021
Approved: 31/12/2021
DOI: 10.24815/sklj.v5i3.23353

Keywords:

Criminal act;
Persecution;
Child.

Abstrak

This research aims to analyse the legal protection for the child offenders in criminal offence of abuse with a fatal outcome, the judge's considerations in imposing imprisonment for the offence and the obstacles in the crime. Data obtained through empirical legal research. This research uses primary data obtained from empirical legal research in the form of interviews with respondents and informants and combines legal materials such as textbooks, theories, laws and regulations which are considered as secondary data. The results of the research showed that the legal protection provided to the child convicts is in the form of identity confidentiality, is treated well during the investigation process, is placed in a special place, the Judges in making considerations always refer to the mitigating factors such as the juvenile's age, the juvenile's mental state, the juvenile's background, the juvenile's family attitude and aggravating things such as a bad juvenile's life history and parents who are unable to educate them.. The things that indirectly hinder the process of settling this case are the parents negligence, lack of cooperation from both parties, and also the influence of gadgets. It is recommended to the law enforcement officers and Juvenile's Special Development Institute should continue to cooperate in carrying out legal protection for child perpetrators according to applicable rules, the judge before imposing a prison sentence should prioritize the best interests of the child and to parents should contributing better in control the children's behavior.

This is an open access article under the [CC BY](#) license.



Corresponding Author:

Rizanizarli
Email: rizanizarli@unsyiah.ac.id

I. INTRODUCTION

Children are the God's gift that must be protected and their dignity as an intellectual human beings that are very valuable comparing with any other things in this world should be defended. (Kamil dan Fauzan, 2010:7).

Every child is entitled to get legal protection which considered as the obligation for all of us, whereas children will continue the regeneration relay for the nation in actualizing the national's expectation. Until now, there are still children's protection which involved in the legal conflict that positioning them as an object which certainly could harm children because their position is still weak compared to the adults. Therefore, a significant action is needed and must be applied by all law enforcement officers, especially those who understand problems with children (Wahyudi, 2015:147).

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (JCJS Law) also regulates the protection of children in conflict with the law whose process can be resolved outside the judicial process by diversion and a restorative approach.

The age of children who can be sentenced to prison is those who are 14 years old with the consideration that at that age there is an increase in the emotional aspect, the child becomes aggressive. A child who commits a crime at that age may be subject to sanctions in accordance with his actions and if the child commits abuse to the point of killing a person, they or she may be subject to criminal sanctions in the form of imprisonment. (Marlina, 2009:118)

Children as a gift from God, have the dignity and rights as human beings that must be upheld. Children as future heirs of the nation have the right to get protection from violence. (Kamil dan Fauzan, 2010:7)

In fact, in 2019 there were 2 (two) cases of child abuse that resulted in death which were handled by the Banda Aceh District Court which was sentenced to imprisonment for 4 (four) years and a fine of Rp. 1.000.000,- . The judge convicts in accordance with the provisions of Article 80 paragraph (3) in conjunction with Article 55 paragraph (1) First in conjunction with Law No.35 of 2014 in conjunction with Law No.17 of 2016 concerning the Second Amendment to the Child Protection Act.

Article 1 paragraph (2) of the JCJS Law classifies children in conflict with the law into three groups, namely: children in conflict with the law, children who are victims of crimes, and children who are witnesses to crimes. The meaning of children in conflict with the law according to Article 1 paragraph (3) of the JCJS Law are those who are 12 years old, but not yet 18 years old which are suspected of committing a crime..

A child who commits a crime can be subject to sanctions if the child commits a crime that harms others, even though the child has legal protection as stipulated in Article 17 paragraph (1) of the JCJS Law. Persecution itself is an intentional act that causes pain or injury to another person's body.

II. RESEARCH METHOD

The research method used in this journal is empirical juridical. The empirical approach is carried out based on objective facts obtained through field research in the form of questions and answers with respondents or other things obtained through sources. (Achmad, 2015:46).

1. Research Location

The research location was carried out in the jurisdiction of Banda Aceh District Court.

2. Population

The population is all objects that want to be investigated further. The population of this research is the Juvenile offenders, Judges, and Investigators.

Sampling Method

The sample is determined through the Non-Random Sampling technique which is a way of determining the sample where the researcher has determined/selected his own sample in his research (Lina, 2005:119). The respondents and informants in this study are::

1. Respondents
 - a. 1 (one) person from the Judges at the Banda Aceh District Court ;
 - b. 1 (one) person from the B. Aceh Police Investigator; and
 - c. Perpetrators of the Crime of Child-on-child Abuse 1 (one) person.
2. Informants
Law Academician from Syiah Kuala University.

Data Collection Method

1. Field Research

Field research is carried out in obtaining primary data by conducting field research in the form of questions and answers to respondents and informants that have been previously determined.

2. Library Research

Literature research is carried out in obtaining secondary data which is conducted by reviewing the Criminal Code, other text books, papers and documents related to the problems to be researched.

Data Analyzing Method

The obtained data obtained were analyzed using a qualitative approach method.

III. RESULTS AND DISCUSSION

3.1. Legal Protection Towards The Juvenile Offenders In The Criminal Offence Of Child-on-child Abuse With A Fatal Outcome.

Legal protection for children who commit crimes will still be provided by law enforcers. In principle, children who are in conflict with the law will still have the legal protection provided by the law. The criminal threat given to children who are perpetrators of crimes is (half) of the main threats for the adult perpetrators.

In a trial which the perpetrator is a child, there are things that distinguish it from an adult trial. The trial in which the convict is a child is conducted in private, while the trial in which the convict is an adult is conducted in an open public manner. This needs to be remembered because the convict is a child who must feel afraid and depressed in facing legal cases.

The results of the study in the jurisdiction of the Banda Aceh District Court found 2 (two) cases of Child Abuse that Caused Child Death.

Table 1
The Criminal Offence of Child-on-child Abuse With A Fatal Outcome Banda Aceh District Court, Year 2019

No	Case Registry No.	Defendant's Name	The Violated Rules	Verdict
1.	13/Pid.SusAnak/2019/PN Bna	SS (16 Years Old)	Article 80 Paragraph (3) Jo Article 55 Paragraph (1) First in conjunction with Law No.23/2002 in conjunction with Law No.35/2014, in conjunction with Law No.17/2016, in conjunction with Law No.11/2012 JCJS and Law No. .8/1981 on the Criminal Procedure Code	4 years imprisonment, and a fine Rp. 1.000.000.000,-
2.	16/Pid.SusAnak/2019/PN Bna	MF (16 Years Old)	Article 80 Paragraph (3) Law No.23/2002 in conjunction with Law No.35/2014, in conjunction with Law No.17/2016 Law No.11/2012 JCJS and Law No.8/1981 on the Criminal Procedure Code	Imprisonment for 4 years and a fine of IDR 1,000,000,000

Source: SIPP PN Banda Aceh, Direktori MA RI, 01 Januari 2021

The table above shows that a child who commits a criminal act of abuse that causes death is sentenced to 4 years in prison and a fine of Rp. 1.000.000,- rupiah.

Children have the right to special protection and facilities guaranteed by law and other means so that physically, mentally, morally, spiritually and socially they can grow and develop in a healthy and natural manner. (Soetodjo, 2005:68).

Based on the results of interviews with the perpetrator whose identity was kept secret, who had just been released from the Juvenile's Special Development Institute and was carrying out assimilation at home, they explained that from the beginning of the investigation process until the execution of the court's decision they had received legal protection as a child. Not only during the investigation process until the execution of the court's decision they received the legal protection, but when they was in the Juvenile's Special Development Institute they is also received protection.

Based on the results of the interview, the convict stated that while they was in the Juvenile's Special Development Institute, the perpetrator also received independent and personal coaching. For independent coaching, it is carried out 2 times a week and various activities are carried out such as the practice of cutting hair, repairing electronic goods, and for personal coaching such as religion, legal counseling, and others.

The form of legal protection that is obtained by the child as the perpetrator is usually firstly diverted, if it is not achieved, then a prosecution is carried out against the child. In the punishment, the child gets a punishment of of the adult punishment, then the child as the perpetrator can also be punished by social work law. In the case of a criminal act of child abuse, the forms of legal protection given to the child who is the perpetrator of the act, namely:

- a. Their identity are not published;

- b. Well-treated during the investigation process;
- c. Accompanied by the Correctional Facility Officers, Social workers, Parents; and
- d. Placed in a special place.

3.2. The Considerations Of Judges In Imposing Imprisonment For The Criminal Offence Of Child-on-child Abuse With A Fatal Outcome

In carrying out their duties, a judge is required to be able to make decisions without regard to and being influenced by the authorities or other parties who want to try to influence the content of the judge's decision. In achieving legal certainty as expected and aspired to, it can be carried out with judicial power, where judges as law enforcers with their decisions can be a measuring tool in order to achieve legal certainty as mandated by law. The judge's decision is important to obtain certainty on the status of the convict and determine the actions that can be taken after the decision has permanent legal force.

The legal basis and reasons for giving the decision must be contained in every court decision as charged in the indictment or unwritten legal sources given to the convict. This is stated in Article 50 paragraph (1) of the Law on Judicial Power, "A court decision must not only contain the reasons and the basis for the decision, there must also be certain articles of the relevant legislation or unwritten legal sources that are used as the basis for adjudicating".

According to Article 195 of the Criminal Procedure Code, it is stated that a court decision is only valid and has legal force if it is pronounced at a trial open to the public. Article 197 of the Criminal Procedure Code which contains the requirements that need to be included in a decision so that the court's decision can be called valid and can be implemented, if these conditions are not fulfilled then the decision will be null and void.

Judges have the discretion independently to consider a sanction that will be decided. Independent judges are absolute and not interfered with by other parties, this guarantees an objective court decision. Independent in setting sanctions also needs to look at the guidelines for the maximum and minimum limits and the independence they have must be based on justice, both for the convict and the community.

Judges in imposing a crime not only look at the facts revealed in court, but also need to look at the rights of children as perpetrators who should receive protection in accordance with the Child Protection Law. The JCJS Law in its criminal articles, especially in the article on child abuse, should include a minimum criminal threat.

Based on the Directory of Decisions of the Banda Aceh District Court No: 13/Pid.Sus-Anak/2019/PN Bna stipulates that the convict has been legally and convincingly proven guilty of committing a crime as stipulated in Article 80 paragraph (3) in conjunction with Article 55 Paragraph (1) 1st of the Criminal Code in conjunction with Law No. 35 of 2014 in conjunction with Law No.

17/2016 in conjunction with the JCJS Law “Together working on violence against children resulting in death”.

In their indictment, the Public Prosecutor demanded that the perpetrator be sentenced to 5 (year) years imprisonment reduced during detention, also demanded the child to pay a fine of Rp. 1,000,000,000.- subsidiary 3 (three) months in prison. The Panel of Judges sentenced to imprisonment of 4 (four) years and a fine of Rp. 1.000.000,- subsidiary with imprisonment for 2 (two) months and a reduced period of arrest and detention.

Judgment Number: 16/Pid.Sus-Anak/2019/PN Bna in its demands the Public Prosecutor demanded that the perpetrator be proven guilty of committing the Criminal Act of Torture Together, committing violence against children to death with the Indictment of Alternative Combination First Primary Article 80 paragraph (3) Law on Child Protection, in conjunction with Law No. 35 of 2014 in conjunction with the JCJS Law, in conjunction with Article 55 Paragraph (1) of the 1st Criminal Code, demanding that the judge impose a sentence of imprisonment for 6 (six) years reduced during detention and demanding that the child pay a fine of Rp. 1,000,000,000.- (one billion rupiah) subsidiary 3 (three) months in prison. The Panel of Judges in their decision imposed a prison sentence of 4 (four) years and a fine of Rp. 1,000,000,000.- (one billion rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 2 (two) months.

In deciding a case the judge must be able to make a fair decision at every stage of the decision they will make. Judges must also be able to consider aspects of legal justice and moral justice in issuing a decision, so that the decision is the result of the real embodiment of precise justice.(Zuliah, 2015:87).

Judges have a basis in making their own judgments and considerations on cases before them. The judge's considerations when imposing a criminal sentence on a child are influenced by:

a. Mitigating Factors

1) Juvenile's Age

Children are the hope of the nation and the state who are the successors of the ideals of the nation's future struggle. In imposing a criminal sentence, the first thing that the judge considers is that the age of the child is categorized as a child or an adult because age is the main factor in imposing criminal penalties. If the perpetrator has been categorized as an adult, then the criminal punishment that will be carried out refers to the Criminal Code, while if the perpetrator is categorized as a child, the criminal punishment refers to the special law on children.

However, if the perpetrator is a child, the judge must first consider whether they can be punished or not because if the convict is not yet 14 years old, the convict cannot be sentenced to imprisonment. Children who are still 12 years old cannot be sentenced to

prison, but if the child is 14 years old, they can be punished with imprisonment. The age of the perpetrator is also a judge's consideration in imposing a criminal sentence.

Judges also in deciding cases need to pay attention to mitigating and aggravating matters. Then in committing a criminal act the convict commits a fatal mistake, it will be entered into the Juvenile's Special Development Institute. However, if the error is not fatal, it will be fostered at the social service office or the Juvenile's Special Development Institute. If the child who is sanctioned social work is not sentenced to prison, but does social work such as cleaning the mushalla which will later be determined by the judge's decision in the trial if there is no diversion. However, if there is a diversion (settlement outside the judicial process) then the case is not processed.

Also in determining the sentence, the judge is very careful in looking at the facts revealed in court. If a child is receiving formal education, the judge must consider how long the child is sentenced to, because the child still has a long way of life.

2) Juvenile's Mental Health Condition

A child is someone who is considered unable to think clearly, control emotions and has not been able to distinguish between right and wrong. In deciding a sentence, the judge is very influenced by the mental condition of the child who has not been able to control himself because the life span of a child is very long and the judge tries to make the decision made by him not traumatize the child and affect the condition of the child as a person who is labeled as evil in society.

3) Juvenile Background

The punishment imposed by the judge against the child is basically expected to be able to make the child not to commit the act in the future and cause a deterrent effect on the child. After the child has finished carrying out his sentence, the child will automatically return to his family.

In general, judges give lighter sentencing decisions for children from well-educated families than children from broken homes, because after serving the sentence, it is hoped that the family can re-educate the child to the right path, even while serving the sentence. The perpetrator's child also gets coaching at the Juvenile's Special Development Institute. The role of parents is very much needed at this stage, the growth and development of a child is greatly influenced by the behavior and nature of the parents.

In contrast to children who come from broken home families, generally do not get the love and attention of their parents, this is one of the reasons for the judge to intensify the punishment of the perpetrator's child in the hope that the perpetrator's child will receive guidance directly given by the Juvenile's Special Development Institute. with the hope that

the perpetrator's child can return to behaving in accordance with the norms as found in society.

4) The Juvenile's Family Attitude

The attitude of the child's family greatly influences the severity of the sentencing decision determined by the judge. Generally, judges give light sentencing decisions for the families of children who make peace efforts and apologize to the families of the victim's children, it is hoped that in the future the families of the victim's children will not feel resentful towards the perpetrator's child and also efforts are made to return or resolve a problem.

b. Aggravating Factors

1) Juvenile's Bad Life History

If the perpetrator's child has bad behavior in everyday life, both in the school environment, residential environment, or his circle of friends which has a bad influence on him and cannot be repaired, then this can be the reason for the judge in deciding a severe sentence against the child who commits crime. the crime.

As for the actual imposition of punishment on child perpetrators imposed by judges solely not wanting to burden the child perpetrators for suffering such as punishment given to adults, but carried out solely for the development of children who are still long in the future. It is hoped that the sentencing of the child can be a warning to other children not to take actions that are prohibited by law and also as a warning to parents who still have children to continue to control the behavior of children in the future not to do prohibited actions. by applicable law.

2) Parent's Inability To Educate

Sometimes bad child behavior is not only caused by a lack of education and parental love for children. However, the child's behavior is also influenced by the surrounding environment such as the child's peers who have bad behavior, this encourages children to imitate the behavior of their bad peers.

If the perpetrator's child's parents say that if they are unable to educate the child, the criminal sanctions obtained by the perpetrator's child will become more severe with the hope that the child in the juvenile prison will receive good guidance and form character based on the norms in society.

3.3. The Obstacles Experienced From the Initial Investigation Process to the Court's Decision In The Criminal Offence Of Child-on-child Abuse With A Fatal Outcome.

In handling cases of children, there are no urgent obstacles, however in examining children, investigators, prosecutors and judges must recognize and explore the character of children, child psychology is also a consideration in child examination and the decisions taken are the best decisions for child development.

Regarding the most urgent obstacle, there is no child case that adheres to the juvenile justice law, where the judicial process is short and must be handled quickly, who handles the child's case must be a child prosecutor who already has certification and knows the condition of the child. Detention of children is different from adults, detention of children must be as soon as possible and cannot be delayed.

The handling of criminal acts committed by children is different from the handling of crimes against adult perpetrators. Likewise about the obstacles experienced by law enforcement parties in overcoming obstacles regarding criminal acts committed by children.

The indirect/urgent obstacles that are often found in overcoming the problem of criminal acts are influenced by:

a. The Parent's Negligence

The role of parents towards children greatly influences the growth and development of a child, behaves and takes an attitude not to do something that is especially forbidden by parents to do so. As we know parents are a reflection of children in their daily behavior, the good and bad behavior of children really depends on how parents educate them. Because. Parents are people who are first met by children and become teachers for them at home who teach many things such as how to behave towards friends in their environment and so on.

Almost all children who commit crimes generally come from families that are not harmonious or from broken homes, where children feel they have no direction to their parents. In fact, the figure of a father and mother greatly influences the behavior of a child. As we know, a child who comes from a broken home tends to take actions that are not commendable and contrary to the law such as committing acts of abuse until a child victim dies, this is very much influenced by the concern for both parents in supervising their children in behave well in their environment and at school in collaboration with teachers at school. A child who is not supervised or cared for by his parents tends to act against the rules, because the child wants to get attention from the people around him for his actions.

b. The Lack Of Cooperation From Both Parties

In carrying out a law enforcement action, especially regarding abuse that causes the death of a child carried out by a child, it must be supported by cooperation between parties

such as the Police, the Prosecutor's Office, the Village Head and the Community in making prevention efforts so that in the future similar cases do not happen again.

The community is the first gate in stemming the occurrence of a criminal act that occurs in their area, such as reporting to the police or to the village head that there has been an act of abuse committed by children against children, with these actions it is hoped that each other can supervise so that security and order are created in the community. in the midst of society.

c. The Influence Of Gadgets

As we know in the current technological era, the influence of gadgets and social media is one of the triggers for changing children's mindsets to commit crimes. This is often an example of a child who wants to get attention from around him.

Play stage is a child's stage in the socialization process by imitating and imitating the actions taken by adults. The development of today's technology can make it easier for someone to access whatever they wants, which is done anywhere and anytime without any barrier. The advantages offered by the rapid development of technology also lead to a negative side where children easily access content that should not be accessed at their age. Again, the role of parents here is the most important, where parents must limit internet access to their children and assist children in accessing the content available on the internet. Because it is very easy to access negative content such as videos of murder or abuse, this is often imitated and used by children to get the attention of those around them and want to show their identity as adults..

There are efforts in every obstacle, according to one of the respondents, namely Jamil, they stated that the countermeasures that can be taken by the investigative team in handling cases of children are to always socialize the existence of legal protection to families, schools, communities in order to have an understanding of a conducive and safe environment for children. Children so that children can be protected from negative influences.

Other efforts that can be done are monitoring children's associations, monitoring the media they use (internet, social media), as well as strengthening supervision by the community regarding children's activities and activities in their respective environments, as well as increasing the intensity of moral strengthening activities (recitation and religious activities). Other communities, youth organizations etc.).

IV. CONCLUSION

The legal protection for the Juvenile's offender of Child-on-child abuse with a fatal outcome must be given to both the child who is the victim or the child who is appointed as a convict from the beginning of the investigation process until the implementation of the court decision they had received legal protection as a child. The forms of legal protection provided are: not having their identities published, being treated well during the investigation process, being accompanied by the Fathers, social workers and parents, and being placed in a special place.

In considering the imposition of imprisonment regarding the case, the judge does not only look at the facts revealed at the trial but also pays attention to the rights of the child as the perpetrator who should receive protection. The things that the Judge considers are influenced by mitigating factors such as: the child's age, the child's mental state, the child's background, the attitude of the child's family and aggravating things such as: the child's life history is bad and the parents are unable to educate.

In handling children's cases there are no urgent obstacles, only the obstacles experienced directly and indirectly are parents don't care, lack of cooperation from the parties, and the influence of gadgets and in examining children, investigators, prosecutors and judges must recognize and explore the child's character, children mental health conditions are also considered in the examination of children and the decisions taken are the best decisions for the child development.

BIBLIOGRAPHY

1. Books

- Ahmad Kamil dan Fauzan, (2010). Hukum Perlindungan dan Pengangkatan Anak di Indonesia. Jakarta: PT Raja Grafindo Persada.
- Ahmad Zaenal Fanani, (2014). Berfilsafat Dalam Putusan Hakim (Teori Dan Praktik). Bandung: Mandar Maju.
- Bambang Prasetyo dan Lina Miftahul Jannah, (2005). Metode Penelitian Kualitatif, Jakarta: Raja Grafindo Persada.
- Lamintang, P.A.F, (1983). Hukum Pidana Indonesia. Bandung: Sinar Baru.
- Marlina dan Azmiati Zuliah, (2015). Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang. Bandung: Refika Aditama.
- Mukti Fajar ND. dan Yulianto Achmad, (2015). Dualisme Penelitian Hukum Normatif dan Empiris, Yogyakarta: Pustaka Pelajar.
- Wagiati Soetodjo, (2005). Hukum Pidana Anak. Bandung: PT Refika Aditama.

2. Journal Article

- Dheny Wahyudhi, (2015). Perlindungan Terhadap Anak yang Berhadapan dengan Hukum Melalui Pendekatan Restorative Justice. Jurnal Ilmu Hukum