

## LEGAL PROTECTION OF UNDERAGE CHILDREN AS VICTIMS OF VIOLENT CRIMINAL ACTS

Permana's Ihtiar <sup>1</sup>, Herwin Sulistyowati <sup>2</sup> & Imam Alghozali Hide Wulakadar <sup>3</sup>  
[tiaraja717@gmail.com](mailto:tiaraja717@gmail.com)<sup>1</sup>, [herwinsulistyowati30@gmail.com](mailto:herwinsulistyowati30@gmail.com)<sup>2</sup>,  
[masghozaliwk@gmail.com](mailto:masghozaliwk@gmail.com)<sup>3</sup>

Submitted: 2023-07-12  
Accepted: 2023-09-18

Published: 2023-09-30  
DOI: xxxxxxxxxxxx

### Abstract

This research aims to find out the legal protection for children as victims of violence according to Law Number 35 of 2014 concerning child protection and to determine judges' considerations in imposing crimes on cases of violence against children in Decision Number 253/Pid. Sus / 2021 / PN Jap. The results of this study are cases of violence that caused death in Criminal Decision Number 253/ Pid. Sus /2021/PN Jap, so it can be seen that there is a denial of Article 26 paragraph 1 of the UUPA, that parents have a responsibility to their children to care for, care for, educate and protect children. The judge's considerations in imposing a sentence are divided into two matters, namely juridical concerns and non-juridical considerations. Juridical considerations are based first on the prosecution's indictment, testimony, witness statements, evidence, and articles in criminal law, namely Article 76C RI Law NO.35 of 2014 concerning Child Protection. While the non-juridical considerations are related to mitigating and aggravating circumstances, namely, the aggravating circumstances of the defendants are the defendants' actions resulting in the child's death and the defendant is the child's biological father (victim). Meanwhile, the mitigating circumstances were that the defendant admitted his actions and was polite in court. Suggestions in this study are that the central government, regional governments, and other state institutions related to child protection (KPAI) must carry out good supervision to carry out socialization regarding all provisions of laws and regulations relating to child protection. Repeated violence should be carried out viciously as an aggravating circumstance to sentence Rubenson to a maximum of 15 years in prison under the provisions of Article 80 paragraph (3) of Law Number 35 of 2014 concerning child protection.

**Keywords:** *child legal protection, judge considerations, child violence*

### Introduction

One of the criteria for a rule of law is the protection of human rights. Guarantees to feel safe and avoid violence are part of Human Rights. The concept of security and a sense of security is part of human rights as stipulated in Law Number 39 of 1999; this law teaches the importance of maintaining a security system and human freedom so that there may be no violence against fellow human beings. The right to feel safe is a human right that is guaranteed by article 35 of Law no. 39 of 1999 concerning Human Rights, which reads: "Everyone has the right to live in a peaceful, safe and secure society and state order, which respects, protects and fully implements human rights and basic human obligations as regulated in this law."

Everyone has the right to feel safe and protected, including children. Based on the UN Declaration on Human Rights, it can be seen that children have the right to live, maintain,

and improve their lives, have freedom, and have needs that must be met by their parents, family, and the state. Therefore, acts of violence against children are acts that contradict the UN Declaration on Human Rights and the Law of the Republic of Indonesia Number 39 of 1999.

The violence against children that will be discussed in this paper is the case of violence against children that occurred in Jayapura. Defendant Rubenson was proven to have committed an act "if among several shows, even though each is a crime or violation, there is such a connection that it must be seen as a continuous action death by parents. The defendant Rubenson, committed violence, which caused the death of his biological child, Zefanya Errari. Rubenson started to commit violence by hitting the victim when the victim was 3 weeks old in 2020 and continued until its peak on March 16 Zefanya Erari was declared dead on Tuesday, March 16 2021 at 05.45 WIT. The incident was then reported to law enforcement officials and received an *incracht* decision, Decision Number 253/ Pid. Sus /2021/PN Jap. Defendant Rubenson was sentenced to punishment criminal prison for 10 (ten) years and a fine of Rp. 800,000. 000, - (eight hundred million rupiah) with provision when fine the No paid so replaced with criminal confinement for 1 (one) month. Child violence is a denial to mandate Constitution Number 35 of 2014 concerning child protection.

### **Research Questions**

1. How legal protection for children as victims of violence according to Law Number 35 of 2014 concerning Protection Oh son Criminal Decision Number 253/ Pid.Sus /2021/PN Jap?
2. What are the judges' considerations in imposing a sentence on cases of violence against children in Decision Number 253/ Pid. Sus /2021/PN Jap?

### **Method**

The research method used is normative legal research, namely legal research conducted by examining literature or secondary data, which consists of primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials are arranged systematically, and a conclusion is drawn concerning the problem under study (Soekanto, 2008).

### **Result and Discussion**

#### ***Protection for Children as Victims of Violence According to Law Number 35 of 2014 concerning Protection of Oh son in Criminal Decision Number 253/ Pid.Sus /2021/PN Jap***

Legal protection for children can be interpreted as an effort to protect the law against various freedoms and children's human rights (fundamental rights and freedoms of children) as well as various interests related to the welfare of children (Waluyadi, 2009). The goals and rationale for the legal protection of children cannot be separated from the ideals of realizing child welfare as an integral part of social welfare as a whole (Gosita, 2004).

Seen from the perspective of national and state life, children are an integral part of a country; children are also the young generation who will continue to realize the ideals

of the nation. So that children have the right to live, grow, develop, and optimally follow their rights to protection from all kinds of acts of violence. (Setiani, 2016).

The legal construction of child protection is based on the mandate of the 1945 Constitution Article 28B paragraph 2, which reads: "Every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination". Moving on from this article, Law Number 4 of 1979 concerning Child Welfare was formed, which states that children have the right to care and protection both during the womb and after birth. Subsequently, Law Number 23 of 2002 concerning Child Protection was formed, which stated that the implementation of child protection was based on Pancasila and the 1945 Constitution as well as the basic principles of the Convention on the Rights of the Child, which include non-discrimination, the best interests of the child, the right to life continuity life and development, and respect for children. Furthermore, in Constitution Number 35 of 2014 concerning Child Protection. According to the provisions contained in Law Number 35 of 2014 concerning Child Protection (UUPA), Article 1 number 2 explains that legal protection for children is "all activities to guarantee, protect children and their rights so that they can live, grow, develop and participate optimally following the rights and dignity and receive protection from violence and discrimination.

Based on Article 26, paragraph 1 UUPA No.35 of 2014, parents have an obligation not quite enough answer to children, including:

- a. Caring for, nurturing, educating, and protecting children;
- b. Developing children according to their abilities, talents, and interests;
- c. Prevent marriage at a young age; And
- d. Providing character education and cultivating moral values behaviour in children.

Speaking in the context of Criminal Decision Number 253/ Pid. Sus /2021/PN Jap, it can be seen that there is a denial of Article 26, paragraph 1 of the BAL. The violence that Rubenson, a father, committed to his son Zefanya, does not reflect the obligation of parents to care for and protect children.

There are 4 (four) kinds of children's rights concerning children's human rights; the first in article 42 of the UUPA is the child's right to life (supreme right), grow, develop, and participate as well as get protection against violence and discrimination. Second, in Article 7, paragraph (1), children have the right to be raised and cared for by their parents. Thirdly in Article 13 paragraph (4), the child has the right to get protection from neglect as long as the child is in the care of parents, guardians, or any other party responsible for child care. Fourth Article 14 paragraph (1) discusses the right of children to be cared for by their parents unless there is a valid legal rule in the child's best interests. The violence that resulted in the death of the child victim Zefanya in Criminal Decision Number 253/ Pid, Sus /2021/PN Jap, clearly violated the rights of the child in Article 42 of the UUPA regarding the right of the child to life (supreme right), grow, develop, and participate as well as get protection against violence and discrimination. Because of him, precisely during his life, he didn't get protection, even resulting in death.

The existence of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection not only protects as stipulated but also emphasizes the need for increasing criminal sanctions and fines for perpetrators of crimes against children. The Law No. 35 of 2014 concerning Child Protection can help to overcome the rampant acts of violence against children in Indonesia. Another effort that can be made to reduce the occurrence of violence in children is to provide counselling in the form of

advice to parents about the importance of caring for children well in living life, starting from the smallest scope in the community family.

***Judge's Considerations in Sentenced in Cases of Violence Against Children in Decision Number 253/ Pid.Sus /2021/PN Jap***

The authority of judges to adjudicate is closely related to the freedom of judges in exercising judicial power. According to Gerhard Robbes, contextually, there are 3 (three) essences in the independence of judges in exercising judicial power, namely: (Ahmad Rifai, 2010).

- a. Judges are only subject to law and justice
- b. No one, including the government, can influence or direct the decision to be handed down by the judge
- c. There are no personal consequences for the judge in carrying out his judicial duties and functions

Criminal Decision Number 253/ Pid.Sus /2021/PN Jap with the defendant Rubenson who committed violence against his child Zefanya, which was carried out since May 2020 and continued until February 23, 2023. Rubenson's background in committing violence against Zefanya (the victim) was because Rubenson did not like seeing the victim cry, and he had a grudge against his parents-in-law because he had reported himself to the police. Rubenson's continuous violence is considered as several acts; although each of them is a crime or violation, there is a relationship in such a way that it must be seen as one continuous action that results in death.

Rubenson 's actions as stipulated and punishable under Article 76C in conjunction with Article 80 Paragraph (3) RI Law No. 35 of 2014 concerning Amendments to RI Law No. 23 of 2002 concerning Child Protection in conjunction with RI Law No. 17 of 2016 concerning Stipulation of Government Regulations Substitute for Law No. 1 the Year 2016 concerning the Second Amendment to RI Law No. 23 of 2002 concerning Child Protection to become Law Jo Article 64 Paragraph (1) of the Criminal Code.

Decision Number 253/ Pid. Sus /2021/PN Jap, decided that:

1. Declare the accused the accused Rubenson Erari Alias Ruben has been proven legally and convincingly guilty of committing the crime of "Physical Violence Against Minors which resulted in the death of their parents."
2. Sentenced the defendant against the defendant therefore with imprisonment for 12 (twelve) years and a fine of Rp.
3. Declare that the accused remains in custody;
4. A blue plastic comb with a comb length of about 21 cm Was tampered with so that it could no longer be used;
5. Stipulates that the defendant pay court fees of Rp. 5,000, - (five thousand rupiah).

The judge's considerations in imposing a sentence on cases of violence against children in Decision Number 253/ Pid. Sus /2021/PN Jap are divided into two matters, namely juridical considerations and non-juridical considerations. Juridical considerations are based, first, on the indictment of the public prosecutor indicting Rubenson as an act, even though each is a crime or violation, is related in such a way that it must be seen as a continuous act against children resulting in death by parents. The second juridical consideration is the defendant's statement, which justifies the contents of the public prosecutor's indictment. The third is witness Rezecy Salenussa, witness to Merry

Marthina Maltor, who testified that Rubenson committed violence against her child, Zefanya. Fourth is Evidence 1 (one) blue plastic comb with a comb length of about 21 cm. Fifth is a chapter in law criminal that is Article 76C RI Law NO.35 of 2014 concerning Amendments to RI Law No.23 of 2002 concerning Child Protection in conjunction with Article 80 Paragraph (4) RI Law No.17 of 2016 concerning Stipulation of Substitute Government Regulations Law No.1 of 2016 concerning the Second Amendment to RI Law No.23 of 2002 concerning Child Protection. Juridical considerations related to mitigating and aggravating circumstances that are the aggravating circumstance for the defendant is that the defendant's actions resulted in the death of the child, and the defendant is the biological father of the child (victim). Meanwhile, the mitigating circumstances were that the defendant confessed his actions frankly and the defendant was polite in court.

### **Conclusion**

Cases of violence that caused death in Criminal Decision Number 253/ Pid. Sus /2021/PN Jap, it can be seen that there is a denial of Article 26 paragraph 1 of the UUPA, that parents have a responsibility to their children to care for, nurture, educate and protect children.

The judge's considerations in imposing a sentence on cases of violence against children in Decision Number 253/ Pid. Sus /2021/PN Jap are divided into two matters, namely juridical considerations and non-juridical considerations. Juridical considerations are based on the indictment of the public prosecutor, the statement of the accused, information, evidence, and articles in criminal law, namely Article 76C of RI Law NO.35 of 2014 concerning Amendments to RI Law No.23 of 2002 concerning Child Protection Jo Article 80 Paragraph (4) ) RI Law No.17 of 2016 concerning Stipulation of Government Regulation instead of Law No.1 of 2016 concerning the Second Amendment to RI Law No.23 of 2002 concerning Child Protection. The non-juridical considerations, namely the aggravating circumstances of the defendant were the defendant's actions resulting in the death of the child; and the Defendant is the biological father of the child (victim). Meanwhile, the mitigating circumstances were that the defendant confessed his actions frankly and the defendant was polite in court.

### **Reference**

- Gosita, Wise. (2004). *Problems Child Protection* (Writing Group), BIP Gramedia Group, Jakarta, p. 5. BIP Gramedia Group.
- Rifai, Ahmad. (2010). *Legal Discovery By Inner Judges Progressive Legal Perspective*. Ray Graphics.
- Setiani, Riris Eka. (2016). *Anti-Violence Education For Early Age Conception and Implementation*, *Golden Age Journal Scientific Grow Early Childhood Development*, Vol. 1 No. April 1, p.39,. *Journal Scientific Grow Early Childhood Flowers*, 1 (1), 39.
- Soekanto, Soerjono. (2008). *Introduction Legal Research*, UI Press, Jakarta, p . 52. UI Press.
- Szmrecsanyi, B. (2006). *Morphosyntactic Persistence in Spoken English*. (W. Bisang, H. H. Hock, & W. Winter, Eds.). New York: Mouton de Gruyter. <http://doi.org/10.1515/9783110197808>
- Waluyadi. (2009). *Child Protection Law*. Mander Forward.