

**A Comprehensive Study of The Criminalization of Parental Violence
Against Children (Legal, Human Rights, and Sharia Perspectives)**

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ABSTRACT

This study is a qualitative study with a descriptive approach, namely an approach that aims to describe each main topic in this study, including the criminalization of children by parents from the perspective of Indonesian law, the criminalization of children by parents from the perspective of human rights, and the criminalization of children by parents from the perspective of sharia law. The data used in this study are secondary data that researchers obtained from books, scientific articles, laws and regulations, websites, and so on. The data obtained was analyzed using the stages of data collection, data selection, data reduction, and drawing conclusions. The conclusion in this article show that from an Indonesian legal perspective, criminalization or violence against children is subject to varying penalties depending on the type of criminalization or violence committed. In physical violence in the form of abuse, the maximum penalty is three years and six months and/or a fine of Rp. 72,000,000.00 for minor abuse. The maximum penalty is five years if the child experiences serious injuries with a fine and/or Rp. 100,000,000.00 for abuse that causes serious injuries. And is subject to a maximum of fifteen years imprisonment and/or a fine of Rp. 300,000.00 if the child dies. If the violence is committed by a parent, a third of the sentence is added. In contrast to physical criminalization, parents can be sentenced to a minimum of five years imprisonment and a maximum of fifteen years if they commit sexual violence against their child, an additional one-third. From a human rights and Islamic law perspective, this is a heinous and prohibited act and the perpetrator must be punished according to the level of criminalization and violence.

Keywords: *Criminalization, Parental Violence Against Children, Human Rights*

ABSTRAK

Penelitian ini merupakan kajian kualitatif dengan pendekatan deskriptif, yaitu pendekatan yang bertujuan untuk mendeskripsikan setiap topik utama dalam penelitian ini, antara lain kriminalisasi anak oleh orang tua dari perspektif hukum Indonesia, kriminalisasi anak oleh orang tua dari perspektif hak asasi manusia, dan kriminalisasi anak oleh orang tua dari perspektif hukum syariah. Data yang digunakan dalam penelitian ini adalah data sekunder yang diperoleh peneliti dari buku, artikel ilmiah, peraturan perundang-undangan, website, dan lain sebagainya. Data yang diperoleh dianalisis dengan menggunakan tahapan pengumpulan data, pemilihan data, pengurangan data, dan penarikan kesimpulan. Kesimpulan dalam artikel ini menunjukkan bahwa dari perspektif hukum Indonesia, kriminalisasi atau kekerasan terhadap anak dikenakan hukuman yang bervariasi tergantung pada jenis kriminalisasi atau kekerasan yang dilakukan. Dalam kekerasan fisik berupa

pelecehan, hukuman paling lama tiga tahun enam bulan dan/atau denda Rp. 72.000.000,00 untuk pelecehan ringan. Hukuman maksimal lima tahun jika anak mengalami luka serius dengan denda dan/atau Rp 100.000.000,00 untuk pelecehan yang menyebabkan cedera berat. Dan dikenakan pidana penjara paling lama lima belas tahun dan/atau denda Rp. 300.000,00 jika anak meninggal dunia. Jika kekerasan dilakukan oleh orang tua, sepertiga dari hukuman ditambahkan. Berbeda dengan kriminalisasi fisik, orang tua dapat dijatuhi hukuman minimal lima tahun penjara dan maksimal lima belas tahun jika melakukan kekerasan seksual terhadap anaknya, tambahan sepertiga. Dari perspektif hak asasi manusia dan hukum Islam, ini merupakan perbuatan keji dan terlarang dan pelaku harus dihukum sesuai dengan tingkat kriminalisasi dan kekerasan.

Kata kunci: Kriminalisasi, Kekerasan Orang Tua Terhadap Anak, Hak Asasi Manusia

INTRODUCTION

Criminalization is an object of study in material criminal law that discusses the determination of an act as a crime that is threatened with certain criminal sanctions. Reprehensible acts that were previously not qualified as prohibited acts are justified as criminal acts that are threatened with criminal sanctions. Criminalization is an action or determination by the authorities regarding certain acts that are considered by society or social groups as acts that can be punished as criminal acts or make an act a criminal act and therefore can be punished by the government by working on its behalf (Soekanto, 1981).

Criminalization is a statement that certain actions must be considered as criminal acts, which is the result of normative considerations whose final form is a decision (Sudarto, 1986). Criminalization can also be interpreted as the process of determining a person's actions as criminal acts. This process ends with the formation of a law in which the action is threatened with a sanction in the form of a crime. The definition of criminalization can also be seen from a value perspective. In this case, what is meant by criminalization is a change in values that causes a number of actions that were previously blameworthy and not prosecuted to change into actions that are considered blameworthy and need to be punished. The definition of criminalization explains that the scope of criminalization is limited to determining an action as a criminal act that is threatened with criminal sanctions. The definition of criminalization is not limited to determining an action as a criminal act and can be punished, but also includes the addition (increase) of criminal sanctions to existing criminal acts (Arief, 1996).

Decisions to criminalize and decriminalize must be based on specific policy factors that take into account a variety of factors including: a. The balance of the means used in relation to the desired outcomes; b. An analysis of the costs of the outcomes in relation to the desired objectives; c. An assessment or estimation of the desired objectives in relation to other priorities in the allocation of human resources; d. The social impact of criminalization and decriminalization in relation to or in light of their secondary effects (Farid, 2010).

Recently, many crimes against children have been on the rise. Crimes involving children have increased annually. Data from the Indonesian Child

Protection Commission (KPAI) shows that from 2011 to the end of 2018, 11,116 children in Indonesia were involved in criminal cases. Crimes such as street crime, theft, mugging, motorcycle gangs, and murder dominated. KPAI Commissioner Putu Elvina said that the number of children who committed crimes in 2011 reached 695. Meanwhile, in 2018, the number of children who committed crimes increased drastically to 1,434 (Sindo, 2019).

Based on this, this study aims to comprehensively analyze the criminalization of parents against children from various perspectives, especially the legal perspective, human rights perspective, and sharia perspective, which the researcher will explain in the following sections

RESEARCH METHODS

Based on the explanation above, it can be concluded that this study aims to comprehensively examine the criminalization of children by parents from the perspective of law, human rights, and sharia (Rukin, 2019). From the words above, it can be concluded that this study is a qualitative study with a descriptive approach, namely an approach that aims to describe each main topic in this study, including the criminalization of children by parents from the perspective of Indonesian law, the criminalization of children by parents from the perspective of human rights, and the criminalization of children by parents from the perspective of sharia law (Lexy J. Moleong, 2014) & (Sugiyono, 2019). The data used in this study are secondary data that researchers obtained from books, scientific articles, laws and regulations, websites, and so on (Sugiyono, 2015) & (Manzilati, 2017). The data obtained was analyzed using the stages of data collection, data selection, data reduction, and drawing conclusions.

RESULT AND DISCUSSION

Criminalization

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A Comprehensive Study Of The Criminalization Of Parental Violence Against Children (Legal, Human Rights, And Sharia Perspectives)

Legal Perspective

A child is a person who is not yet (eighteen) years old, including a child who is still in the womb. A family is the smallest unit in society consisting of a husband and wife or a husband and wife and their child, or a father and their child or a mother and their child or a blood relative in a straight line up or down to the third degree. Parents are the biological father and/or mother or father and/or stepmother or adoptive father and/or mother. A guardian is a person or body who in reality exercises parental custody over a child (Pasal 15a Undang-Undang No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak, 2014). A neglected child is a child whose needs are not met properly, whether physical, mental, spiritual, or social. An adopted child is a child whose rights are transferred from the family of parents, legal guardian or other person responsible for the care, education and raising of the child to the family of his adoptive parents based on a court decision or order. A foster child is a child who is cared for by a person or institution to be given guidance, care, treatment, education and health because his

parents or one of his parents are unable to guarantee the child's normal growth and development. Custody is the power of parents to care for, educate, maintain, foster, protect and develop children in accordance with their religion and in accordance with their abilities, talents and interests (Pasal 1 (1) Undang-Undang No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak, 2014).

From the above explanation, it can be concluded that violence against children is an act of hurting a child's body but not to the point of causing death. Violence that occurs against children includes hitting, pulling hair, lighting hot objects, pushing, pulling and other violence. The article on child abuse is specifically regulated in Article 76C of Law No. 35 of 2014 which states "Everyone is prohibited from placing, allowing, doing, ordering to do, or participating in committing violence against Children". The sanctions for people who violate the above article (perpetrators of violence/abuse) are determined in Article 80 of Law No. 35 of 2014, namely (Undang-Undang Republik Indonesia No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak, 2014): 1) Every person 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 Rp. 72,000,000.00 (seventy-two million rupiah). 2) In the case of a child as referred to in paragraph (1) being seriously injured, the perpetrator shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). 3) In the case of a child as referred to in paragraph (2) dying, the perpetrator shall be punished with a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah). 4) The penalty shall be 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 article on sexual violence is regulated in Article 76D and 76E of Law No. 35 of 2014. Article 76D states "Everyone is prohibited from committing violence or threats of violence to force a child to have sexual intercourse with him or with another person." While Article 76E states "Everyone is prohibited from committing violence or threats of violence, forcing, using trickery, carrying out a series of lies, or persuading a child to commit or allow indecent acts to be committed." The sanctions for those who violate Article 76D above are determined in Article 81 of Law No. 35 of 2014, namely (Undang-Undang Republik Indonesia No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak, 2014): 1) Everyone who violates the provisions as referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). 2) The criminal provisions as referred to in paragraph (1) also apply to anyone who intentionally commits deception, a series of lies, or persuades a child to have sexual intercourse with him or another person. 3) In the case of a criminal act as referred to in paragraph (1) being committed by a parent, guardian, child caretaker, educator, or

education staff, the penalty shall be increased by 1/3 (one third) of the criminal threat as referred to in paragraph (1).

Human Rights Perspective

In the perspective of Human Rights, criminalization of children or violence against children is divided into three types, namely: 1) Physical Violence: Physical violence against children, namely torture, beatings, and abuse of children, with or without the use of certain objects that cause physical injuries or death to children. The form of wounds can be abrasions or bruises due to contact or blunt force, such as bite marks, pinches, belts or rattan. It can also be in the form of burns from hot gasoline or patterns from cigarette burns or irons. The occurrence of physical violence against children is generally triggered by the child's behavior that is not liked by their parents, such as naughty or fussy children, crying continuously, asking for snacks, defecating, urinating or vomiting in random places, breaking valuables. Physical violence such as slaps, excessive beatings and so on, which are usually carried out by irresponsible people, as a result of this violence children often experience trauma, fear that is always gripping, this affects their level of development in the future (Huraerah, 2018). 2) Psychological Abuse: Psychological child abuse includes scolding, using harsh and dirty words, showing children pornographic books, pictures, and films. Children who experience this treatment generally show symptoms of maladaptive behavior, such as withdrawal, shyness, crying when approached, fear of leaving the house, and fear of meeting other people. Psychological abuse can affect the child's constant feelings of anxiety, constant shock, depression, apathy, lack of responsiveness, strong aggression, and other abnormal behavior compared to children of the same age. This is because the child is always imprisoned in his freedom, shouted at, even dwarfed, this is a very bad experience for the child, the child will become shy and lose self-confidence among his peers (Mahbub, 2015). 3) Sexual Abuse: Sexual child abuse can take the form of pre-sexual contact between a child and an older person (through words, touch, visual images, exhibitionism), or direct sexual contact between a child and an adult (incest, rape, sexual exploitation). Those that fall under the category of sexual violence against children include: exposing children to pornographic materials such as pornographic sites/pictures/films/reading materials, exposing children to sexual activities such as intercourse, directing children to sexual acts/movements, exposing genitals to children (exhibitionism), having sexual relations with children, groping or playing with children's vital organs, committing sodomy against children, peeping and spying on children while they are bathing (voyeurism), bathing children over the age of 5 so that the child never feels ashamed, photographing children naked, distributing photos of children naked, teaching children to masturbate, forcing children to touch the perpetrator's genitals and all actions aimed at exploiting children sexually (Sugijokanto, 2014).

Sharia Perspectives

Islam, in the contemporary context, is better known as Islamic law—essentially comprising the sacred commandments of Allah SWT intended to regulate

every aspect of Muslim life and encompassing both pure legal material and religious spiritual material. Islamic law plays a crucial role in creating and implementing holistic human development, both in this world and the hereafter—in both the material and mental-spiritual spheres. This demonstrates that the scope of Islamic law is not limited to its adherents and followers, but rather accommodates all human rights. This means that Islamic law not only regulates the relationship between humans and God but also the relationship between humans and themselves, humans and other humans in society, humans and objects, and humans and their environment. This is also emphasized in the Quran, the primary basis of Islamic law, which contains numerous verses related to the fulfillment and protection of human rights and prohibits Muslims from committing human rights violations (Siti Nurjanah, 2017).

Violence in Islamic law can also be called a criminal act against someone other than the soul. What is meant by a crime other than the soul, as stated by Abdul Qadir Audah, is any act of harm to another person that affects their body, but does not take their life. This understanding is also in line with that stated by Wahbah Zuhaili, that criminal acts against other than the soul are any unlawful acts against the human body, whether in the form of cutting off body parts, wounds or beatings, while the soul or soul and life remain undisturbed. In Islamic law, acts of violence against children constitute a violation of religious values. A child's rights are truly protected from the time they are in the womb until they are 18 years old or until they are married. But here there is still tolerance for a little "violence" that is permitted as long as it does not affect physical and mental development as a means of education for children. Protection of children aims to guarantee and protect children and their rights so that they can live, grow and develop, participating optimally in accordance with human dignity. And receive special protection from physical, psychological and sexual violence (Muslich, 2005).

In Islamic law, physical violence is considered a crime, an unlawful act for which the perpetrator is subject to sanctions or punishment. Violence committed by parents not only results in the imposition of qisas (retribution) laws on parents, but also can result in the revocation of parental authority for neglecting their responsibilities as parents, who should educate, protect, and nurture their children from things that could endanger their safety. Furthermore, all religions fundamentally reject violence as a principle in carrying out an action, as violence is an immoral act that requires coercion against another party, which violates the principle of freedom in social interaction (Misaroh, 2013).

CONCLUSION

Based on the explanation above, it can be concluded that from an Indonesian legal perspective, criminalization or violence against children is subject to varying penalties depending on the type of criminalization or violence committed. In physical violence in the form of abuse, the maximum penalty is three years and six months and/or a fine of Rp. 72,000,000.00 for minor abuse. The maximum penalty is five years if the child experiences serious injuries with a fine and/or Rp. 100,000,000.00 for abuse that causes serious injuries. And is subject to a maximum of fifteen years

imprisonment and/or a fine of Rp. 300,000.00 if the child dies. If the violence is committed by a parent, a third of the sentence is added. In contrast to physical criminalization, parents can be sentenced to a minimum of five years imprisonment and a maximum of fifteen years if they commit sexual violence against their child, an additional one-third. From a human rights and Islamic law perspective, this is a heinous and prohibited act and the perpetrator must be punished according to the level of criminalization and violence.

REFERENCES

- Arief, B. N. (1996). Bunga Rampai Kebijakan Hukum Pidana. Citra Aditya Bhakti.
- Farid, Z. A. (2010). Hukum Pidana 1 Cetakan Ketiga. Sinar Grafika.
- Huraerah, A. (2018). Kekerasan Terhadap Anak Cet-1 edisi IV. Nuansa Cendekia.
- Lexy J. Moleong. (2014). Metode Penelitian Kualitatif. Remaja Rosdakarya.
- Mahbub, S. (2015). Kekerasan Terhadap Anak Perspektif HAM dan Hukum Islam Serta Upaya Perlindungannya. *Jurnal Studi Keislaman*, 1(2), 224.
- Manzilati, A. (2017). Metodologi Penelitian Kualitatif Paradigma, Metode, dan Aplikasi. UB Press.
- Misaroh. (2013). Kekeraasan Orang Tua dalam Mendidik Anak Perspektif Hukum Pidana Islam. *Jurnal Agama Dan Hak Azazi Manusia*, 2(2), 263.
- Muslich, A. W. (2005). Hukum Pidana Islam. Sinar Grafika.
- Pasal 1 (1) Undang-Undang No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak, 3 (2014).
- Pasal 15a Undang-Undang No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak, 5 (2014).
- Undang-Undang Republik Indonesia No. 35 Tahun 2014 Tentang Perubahan atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak, 40 (2014).
- Rukin, R. (2019). Metodologi Penelitian Kualitatif. In Yayasan Ahmar Cendekia Indonesia.
- Sindo, K. (2019). Tindak Kriminalitas Anak Sangat Memprihatinkan. Sindonews. <https://nasional.sindonews.com/berita/1386542/13/tindak-kriminalitas-anak-sangat-memprihatinkan>
- Siti Nurjanah. (2017). Perlindungan Anak. *Jurnal Keberpihakan Hukum Islam Terhadap Perlindungan Anak*, 14(02), 421.
- Soekanto, S. (1981). Kriminologi: Suatu Pengantar. Ghalia Indonesia.
- Sudarto. (1986). Kapita Selektta Hukum Pidana. Alumni.
- Sugijokanto, S. (2014). Cegah Kekerasan pada Anak. PT Eleksmdia Komputindo.
- Sugiyono. (2015). Metode Penelitian Kombinasi. Alfabeta.
- Sugiyono. (2019). Metode Penelitian Kuantitatif, Kualitatif, R&D.