

LEGAL ANALYSIS OF THE PERPETRATOR'S RESPONSIBILITY FOR THE CRIMINAL ACT OF MURDER COMMITTED BY PARENTS AGAINST THEIR CHILDREN (Study of Medan District Court Decision Number 3561/Pid.B/2020/PN Mdn)

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ABSTRACT

Crimes against life (homicide) are the highest crimes in the hierarchy of crime classification, and in terms of punishment, they are also the most severe in the Criminal Code.. The regulation of the crime of murder committed by parents against children is regulated in the Criminal Code, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 23 of 2004 concerning Domestic Violence and in the crime of murder committed by parents against children the defendant is charged as regulated and is subject to criminal penalties in Article 338 of the Criminal Code

1. Introduction

The Republic of Indonesia is a state based on law, not only based on power alone, but also based on Pancasila and the 1945 Constitution. This means that the Republic of Indonesia upholds human rights and guarantees that all its citizens have equal status before the law and government, and are obliged to uphold the law and government without exception.

The statement that Indonesia is a state of law also has the consequence that the Indonesian state applies law as an ideology to create order, security, justice and welfare for its citizens, so that the law is binding for every action taken by its citizens. A state of law must fulfill several elements, including the government in carrying out its duties and obligations, must be based on law

or statutory regulations, there is a guarantee of human rights, there is a division of power within the state, there is supervision from judicial bodies.

Constitutional protection of human rights, one of which is the protection of the lives of its citizens as stated in Article 28A of the 1945 Constitution: "Everyone has the right to live and the right to defend his life and existence." Life and body are the most valuable human property and are the basic rights of every human being, given by God Almighty and no one can take it away.

One type of crime is a crime against life, which involves an attack on another person's life. The legally protected interest and object of this crime is human life. Life refers to that which gives life to humans. In their lives, humans require legal protection for life, a gift from God. The consequence of a crime against life is the loss of life and the loss of a person or entity, the death of another person and this crime is called murder and the consequences that arise are absolute conditions.

The Indonesian nation guarantees protection for the lives of every citizen, from the unborn child to the deceased. The goal is to prevent arbitrary action, particularly those involving the taking of another person's life (murder). In simpler societies, killing is a source of pride, demonstrating a person's courage and heroism within their group. From a religious perspective, killing is forbidden, even prohibited. Therefore, any act that threatens the safety and security of a person's life is considered a serious crime and therefore carries a severe penalty.

Murder, in terminology, means the act of killing or killing. In the Criminal Code, murder is the intentional taking of another person's life. Perpetrators of this crime will be subject to sanctions in the form of criminal penalties. The justification for imposing a criminal penalty on a perpetrator lies in the existence or occurrence of the crime itself. Every crime must result in the imposition of a penalty on the perpetrator.

Most crimes committed in society are crimes against the bodies and lives of others, such as murder, which is a very sadistic phenomenon in society. Murder is the act of intentionally taking the life of another person, a gift from God Almighty and no one can take it away. This act does not reflect or comply with applicable legal norms and there is no justification for such actions

2. Research Method

This research is descriptive analysis, that is, research that describes, examines, explains, and analyzes laws and regulations related to the objectives of this

research. The purpose of descriptive research is to accurately describe the characteristics of individuals, conditions, symptoms, or certain groups, or to determine the frequency or distribution of a symptom or the frequency of certain relationships between symptoms and other symptoms in society. The main purpose of analyzing legal materials is to understand the meaning contained in the terms used in the statutory regulations conceptually, as well as to understand their application in practice and legal decisions.

In accordance with the research problems and objectives, the type of research used is normative legal research. The type of research used in this study is normative legal research by examining library materials or secondary data materials which include books and legal norms contained in laws and regulations, legal principles, legal rules and legal systematics as well as reviewing statutory provisions, court decisions and other legal materials relevant to the formulation of the research

3. Results And Discussion

The legal provisions for the crime of child murder in Indonesia cover several aspects, namely murder by one's own mother (Article 341 of the Criminal Code), murder by an adult or another child (general articles of the Criminal Code such as 338 and 340 of the Criminal Code), and special treatment for minors who commit crimes (Law Number 11 of 2012). The criminal penalty for a child who commits murder is half the penalty for an adult, and the legal process follows the principles of the juvenile criminal justice system.

Criminal law enforcement in child murder in Indonesia currently uses the Criminal Code and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Articles related to infanticide are also applied, namely Article 305 of the Criminal Code "Whoever places a child who is under seven years old to be met, or leaves the child, with the intention of freeing himself from him, is threatened with a maximum prison sentence of five years and six months."

Article 306 of the Criminal Code (1) If one of the acts mentioned in Articles 304 and 305 results in serious injury, the guilty party shall be subject to a prison sentence of seven years and six months (2). If it results in death, a maximum prison sentence of nine years shall be imposed. Article 307 of the Criminal Code If the person committing the crimes mentioned in Article 305 is the father or mother of the child, then the punishment stipulated in Articles 305 and 306 may be increased by one third.

Article 308 of the Criminal Code If a mother, fearing that people will find out about the birth of her child, places her child there to be found or leaves him shortly after giving birth, with the intention of separating herself from him, then the maximum sentence in Articles 305 and 306 is reduced by half.

If we look closely at the formulation of Article 305 to Article 308, it is clear that it is not about infanticide, but rather regulates the placement of children and abandonment of children. Article 308 reduces the threat by half because the time the crime was committed is linked to the emotional mental state of the mother where in addition to shame, fear, hatred, confusion and pain are mixed together so that the act is considered not to have been done in a calm, conscious and calculated mental state. This explains why the threat of punishment in infanticide cases is lighter when compared to other murder cases.

Article 341 of the Criminal Code A mother who, due to fear of being discovered that she is giving birth, intentionally takes the life of her child at the time of the child's birth or shortly thereafter, is threatened with murdering her own child, with a maximum imprisonment of seven years. Article 342 of the Criminal Code A mother, who, in order to carry out an intention determined by fear of being discovered that she is giving birth, intentionally takes the life of her child at the time of the child's birth or shortly thereafter, is threatened with murdering her own child with premeditation, with a maximum imprisonment of nine years.

These two articles are clearly formulated and can be used to punish/trap perpetrators of the crime of infanticide, but must fulfill the following elements:

1. A mother who is afraid of being discovered gives birth to a child
2. Deliberately taking the life of his child.

Article 80 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states:

- (1) Any person who violates the provisions as referred to in Article 76C shall be punished with imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a maximum fine of IDR 72,000,000.00 (seventy-two million rupiah).
- (2) In the event that a child as referred to in paragraph (1) is seriously injured, the perpetrator shall be punished with a maximum prison sentence of 5 (five) years and/or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).
- (3) In the event that the child as referred to in paragraph (2) dies, the perpetrator shall be punished with a maximum prison sentence of 15 (fifteen) years and/or a maximum fine of IDR 3,000,000,000.00 (three billion rupiah).

- (4) The penalty is increased by one third of the provisions as referred to in paragraph (1), paragraph (2) and paragraph (3) if the perpetrator of the abuse is the parent.

Article 80 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that the penalties are heavier and the fines are quite large compared to the criminal threats contained in the Criminal Code. Meanwhile, the types of criminal penalties are regulated in Article 10 of the Criminal Code. Article 80 paragraph (4) can be used to ensnare perpetrators of the crime of murdering a baby committed by its own biological mother. The threat of punishment is increased by one third.

The prohibition on committing physical violence against other people within the scope of the household and the scope of the household referred to in this law is:

1. Husband, wife and children (including adopted children and stepchildren);
2. People who have family relations with the people mentioned in letter a, such as cousins, in-laws, in-laws, etc.;
3. A person who works to help the household concerned, whether permanent or not.

The elements contained in Law Number 23 of 2004 concerning Domestic Violence regarding the murder of children are:

1. Loss of life;
2. Preceded by violence or abuse;
3. The victim is a person who is part of the household (including children);
4. The perpetrator is a person who is also included in the household scope;
5. Without having to know the motive for the action.

The similarities between Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 23 of 2004 concerning Domestic Violence are:

1. The acts of cruelty committed were deliberate;
2. Before resulting in the victim's death, there was violence or abuse;
3. Motives have no influence in determining punishment.

The differences between the two laws above are:

1. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, the victims are very clearly stated as children, whereas in Law Number 23 of 2004 concerning Domestic Violence, the victims are people who are within the scope of the household, where children are one part of it.
2. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that if the perpetrator is the child's parent, the threatened sentence will be increased by one third, whereas in Law Number 23

of 2004 concerning Domestic Violence there is no threat of increased punishment for parents who have caused the death of their child.

Based on the above, even though the Criminal Code has specifically regulated murder accompanied or preceded by abuse, however, with the principle of *lex posteriori derogat lex priori* (new legal regulations override old legal regulations) and also the principle of *lex specialis derogat lex generalis* (special legal regulations override general legal regulations), then Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection applies to the murder of children accompanied or preceded by abuse, but this does not apply if it is connected with the existence of Law Number 23 of 2004 concerning Domestic Violence which was born in 2004.

The principle that applies between the two regulations is the principle of *lex specialis derogat lex generalis* because although Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection predates Law Number 23 of 2004 concerning Domestic Violence, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection has specific articles so that not all articles in the law can be applied with Law Number 23 of 2004 concerning Domestic Violence. This specificity lies in the articles that specifically and firmly regulate the murder of children by their parents. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, the threat of punishment is increased by one third of the original sentence, namely 10 (ten) years and/or a fine of Rp. 100,000,000 (one hundred million rupiah) and also the threat of punishment containing 3 (three) options, namely imprisonment, a fine or even both, emphasizing how cruel and evil parents are who have the heart to hurt their children until the child loses his life, whereas in Law Number 23 of 2004 concerning Domestic Violence discusses criminal acts that occur within the family circle without any aggravation if the perpetrator is the child's parent.

Murder committed by a parent against his child based on decision Number 3561/Pid.B/2020/PN Mdn carried out by Rahmadsyah; based on the decision of the Medan District Court Judge, the defendant Rahmadsyah was legally and convincingly proven guilty of committing a crime by intentionally taking the life of another person so that the panel of judges sentenced the defendant to 15 (fifteen) years in prison.

In this case, the parents' responsibility for the murder of their child was not established during the trial, either through evidence that could justify the removal of the sentence, and therefore the defendant was deemed physically and mentally fit to commit the crime. Based on these reasons, the judge issued the verdict

4. Conclusion

The regulation of the crime of murder committed by parents against children is regulated in the Criminal Code, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 23 of 2004 concerning Domestic Violence and in the crime of murder committed by parents against children the defendant is charged as regulated and is subject to criminal penalties in Article 338 of the Criminal Code.

The criminal responsibility of parents who committed murder against a child based on Medan District Court Decision Number 3561/Pid.B/2020/PN Mdn the defendant has been legally and convincingly proven guilty of committing the crime of murder and the defendant was sentenced to 15 (fifteen) years in prison.

The judge's legal considerations in the Medan District Court Decision Number 3561/Pid.B/2020/PN Mdn are mThe panel of judges considered the prosecutor's demands, the fulfillment of the elements as stipulated in the articles of indictment, the absence of justification or excuse, and the finding of guilt, as well as aggravating and mitigating factors. The panel of judges' decision on this case included the defendant's actions resulting in the victim's death

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