

CRIMINAL SANCTIONS AGAINST CHILDREN WHO ABUSE THE ELDERLY

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ABSTRACT

Various forms of crime that can be committed by children. One form of crime that develops in society and constitutes a crime is persecution or violence. The crime of persecution is one of the crimes that develops from time to time, one of which can be seen not from the perpetrators who are not adults but also children. The study aims to find out; (1) how the legal arrangement for children who commit criminal acts of abuse?, (2) what are the criminal sanctions against children who abuse the elderly. This study uses the type of normative legal research as a reference in research. Based on the research results, children who commit criminal acts are classified as special laws, overriding general laws or adhering to the principle of lex specialist derogat legi generali. The legal basis for punishing children is based on Law Number 11 of 2012 concerning the Criminal Justice System. Child. Child promiscuity is the biggest problem in juvenile delinquency or criminal acts by children.

KEYWORDS criminals; elderly; elderly abuse



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INTRODUCTION

The State of Indonesia is a State of Law based on Pancasila, and The 1945 Constitution of the Republic of Indonesia. According to Article 1 paragraph (3) the Constitution of the Republic of Indonesia is a rule of law (Simamora, 2014). From these provisions it can be said that Indonesia aims to organize order from the law, so as to maintain public order and tranquility based on applicable law and to uphold truth and justice.

Criminal acts are actions that are not only formulated by the book In the Criminal Law Act (KUHP), the term criminal act as translated from strafbaarfeit shows the meaning of a person's behavior (Sianturi, 2002). A person can be said

How to cite: Widyantara, I. M. M. & Sugiarta, I. Y. G. (2023). Criminal Sanctions against Children Who Abuse the Elderly. *Journal Eduvest*. 3 (5): 913-920

E-ISSN: 2775-3727

Published by: <https://greenpublisher.id/>

to have committed a criminal act, if the act has been regulated in law, in accordance with the legality in Article 1 paragraph (1) of the Criminal Code which reads, no act can be punished except for force and criminal rules in existing legislation, and before the deed is done. The following is the definition of a crime according to experts and scholars: Simons stated that a criminal act is a behavior (handeling) that is against the law and is punishable by crime, which is related to mistakes and is carried out by people who are capable of being responsible. A criminal act is an act of a person who is subject to punishment (Adji, 2002). According to Van Hamel, a criminal or straf is a suffering that is specific in nature, which has been imposed by the competent authority to impose a sentence on behalf of the state as the responsibility of public law order for an violator, namely solely because that person has violated a legal regulation that must be enforced by the state (Lamintang, 2002).

Based on definitions above, it can be concluded that what is referred to as a criminal act is an act according to the rule of law prohibited and threatened with crime, where the meaning of the act here is other than act that is active (doing something that is actually prohibited by law) and passive actions (not doing anything real required by law) (Prasetyo & Barkatullah, 2012).

The elements of a crime consist of objective elements and subjective elements. Subjective elements are elements that are inherent in the actor or person related to the perpetrator himself, including everything contained within his heart. Objective elements are elements that have to do with circumstances, namely where the action of the actor was carried out in accordance with his intention in the first place, as he should have done. The criminal act itself is divided from several types, namely formal offenses, material offenses, dolus offenses, complaint offenses and offenses political. "Children are young people at a young age soul and his life's journey because he is easily influenced by circumstances surrounding" (Koesnan, 2005).

The flow of globalization followed by developments in the economy, science, and technology has both positive and negative impacts (Batoebara, 2016). Behavior pattern humans are becoming increasingly deviant and not in accordance with the norms that apply in society which in the end can lead to crime an offense or even a crime. Therefore, the legal system of each country in practice it continues to experience modernization and not a single country that can refuse it. For example, the Indonesian state demands it be done changes in all fields, including changes in the field of law with bring up new ideas to reform the current law. One form of crime that develops in society and constitutes a crime of persecution or violence.

Observing the phenomenon of the acts of persecution that occurred, it seems that this was not something that just happened. But the driving factors for someone to commit persecution such as the influence of negative associations that lead to delinquency, thuggery, social jealousy, economic pressure and inequality, disharmony in family relationships or with other people, competition, conflicts of interest and others (Hutasuhut, 2022). Seeing actions that intersect with persecution as intended, should be known and properly implemented by law enforcement officials in realizing the desired justice. Based on circulating and

viral information on social media, there are some cases of abuse committed by children. One of them is the case of the action of the six children who abused an elderly person. The act of abuse committed by the six children, in the video shows an old woman standing on the side of the road approached by a group of children riding motorbikes. The six children then kicked the old woman to the ground. Not only that, they also beat the woman with a stick (George, 2016). The thing that becomes the object of persecution is an elderly person or what is called an elderly person. Old age (late adulthood) is a stage that begins at retirement, after the children have families, around the age of 60's (Firmansyah, 2022).

The objectives of the research regarding criminal sanctions against children as perpetrators of abuse against the elderly include; (1) to find out and understand how the law regulates children who abuse the elderly, and (2) to know and understand how criminal sanctions are against children who commit crimes against the elderly.

RESEARCH METHOD

The research method is a procedure or steps effective and efficient, which is generally used to collect, analyze and manage data in terms of answering the problems studied correctly. The type of research used is normative legal research. Study This type of law is conceptualized as what is written in statutory regulations. invitations or laws that are conceptualized as rules or norms which are standards of human behavior that are considered appropriate. This research based on the applicable legal norms contained in the regulations legislation.

RESULT AND DISCUSSION

Legal Arrangements toward Children as Persons of Criminal Actions of Persecution

Definition of Minors and Crimes

Children who still have the protection of the law in Article 1 paragraph 1 Law No. 23 of 2002 explains the meaning of children is someone who is not yet 18 years old, including children who are still under in the womb so that the unborn child is still inside Mother's womb according to this law has received a legal protection (Santriati, 2020).

Criminal acts or strafbaar feit in Dutch have the following meanings criminal act, delict, criminal act or criminal act (Hamzah, 2017). Somebody can be said to have committed a criminal act, if the act has been regulated in law, in accordance with the Legality Principle in Article 1 paragraph (1) of the Criminal Code which reads, no act can be punished except on the strength of the rules criminal law in existing legislation, before the act is committed. A criminal act is an act that is prohibited by a prohibition law rule which is accompanied by threats (sanctions) in the form of certain crimes, for whoever violate the prohibition (Moeljatno, 2008).

Legal Arrangements Against Elderly Abuse

Based on the definition of persecution above, the author tries to explain and explain the various types of abuse. Based on Articles 351 – 355 of the Criminal Code, including:

1) Ordinary maltreatment

Article 351 of the Criminal Code, formulates: (1) Maltreatment is punishable by imprisonment for a maximum of two years and eight months or a fine of up to Rp. 4,500 ,-.(2) If the act causes serious injury, the person is punished with a maximum imprisonment of five years. (3) If the act results in the death of the person, he is sentenced to a maximum of seven years in prison. (4) With torture it is equated with damaging a person's health intentionally. (5) The attempt to commit this crime cannot be punished. The elements of maltreatment as regulated in Article 351 paragraph (1) of the Criminal Code are:

a) The element of intent

b) The element of the act

c) Elements resulting from the act in the form of pain, discomfort to the body, and bodily injury, however, Article 351 paragraph (1) of the Criminal Code does not require changes in appearance or body as a result of the crime of persecution.

2) Mild Persecution

Minor maltreatment is regulated in Article 352 of the Criminal Code, which carries a maximum penalty of three months in prison or a fine of three hundred rupiahs if it is not included in the formulation of Articles 353 and 356 of the Criminal Code, and does not cause illness or obstruction to work.

3) Planned Persecution

There are three types of premeditated maltreatment as stated in Article 353 of the Criminal Code, namely premeditated maltreatment which does not result in serious injury or death and is punishable by a maximum of 4 years in prison, then premeditated maltreatment which results in serious injury and is sentenced to a maximum of 4 years in prison, and premeditated maltreatment resulting in death punishable by imprisonment for up to 9 years.

4) Severe Persecution

Serious maltreatment is regulated in Article 354 of the Criminal Code, namely anyone who intentionally seriously injures another person, is threatened with committing serious maltreatment with a maximum imprisonment of 8 years. If the said act results in death, the offender is punished by a maximum imprisonment of 10 years.

5) Aggressive Persecution Planned

Serious maltreatment is contained in a combination of Article 354 paragraph (1) of the Criminal Code concerning serious maltreatment and Article 353 paragraph (2) of the Criminal Code concerning premeditated maltreatment. This punishment must fulfill the elements of serious maltreatment and premeditated persecution.

6) Persecution of people

This punishment is determined in Articles 351, 353, 354 and 355 and can be added by one third:

- a) For those who commit the crime to their mother, legal father or wife or child.
- b) If the crime was committed against an official when or because of carry out their lawful duties.

In principle, the crime of maltreatment committed by a child is the responsibility of the child himself, but because the defendant is a child, the presence of parents, guardians or foster parents cannot be separated. The responsibility of a child in committing a crime is that the child is responsible and willing to be investigated, prosecuted and tried in court, however, there are provisions where a child is not processed the same as processing an adult.

All crimes committed against children must be given strict punishment so that this does not happen again. Protection for children who have become victims must also be carried out such as providing compensation and restitution to victims. The juvenile criminal justice process is a juridical process in which the law is upheld without prejudice to freedom of expression and defense where decisions are taken with a certain motivation, therefore child protection needs to be endeavored in a condition in which every child can carry out his rights and obligations, and as far as possible, may have to be cultivated in various fields of state and social life. Providing children's rights and obligations, of course, also includes children who are in conflict with the law.

Elements of Criminal and Criminal Sanctions Against Children as Persons of Criminal Actions of Abuse Against the Elderly

Definition of Criminal Sanctions and Mistreatment of the Elderly

A criminal sanction is a causal punishment, the cause is the case and the consequence is the punishment, the person affected will receive sanctions either going to jail or being subject to other punishments from the authorities. A criminal sanction is a type of sanction of a disgraceful nature that is threatened or imposed on an act or perpetrator of a criminal act or a criminal act that can disrupt or harm legal interests (Suhariyono, 2018). Criminal sanctions are basically a guarantee to rehabilitate the perpetrators of these crimes, but it is not uncommon for criminal sanctions to be created as a threat to human freedom itself (Leden, 2005).

Criminal sanctions are an application of punishment imposed on perpetrators of criminal acts who have committed acts against the law, where these actions can harm themselves or others and have been regulated in a certain law. According to Darwan Prints, what is meant by criminal sanctions is a punishment imposed on someone who is legally and convincingly proven to have committed a crime (Darwan, 2018). It can be concluded that criminal sanctions are a cause and effect of a person's behavior that harms others and violates the provisions of criminal law, so it is necessary to describe the results so that these actions are not repeated. According to research, violence against the elderly tends to occur where they live. Meanwhile, the perpetrators of violence themselves are generally teenagers and adults (Putra, 2019). Violence against the elderly takes many forms, some of which are:

1) Physical Violence Against the Elderly

The meaning is violence against the elderly that is intentionally carried out and causes physical pain, injury or injury. Violence in question is not only like hitting or acting violently, but also drug abuse, restraint or confinement.

2) Emotional violence

It refers to any treatment of the elderly that can cause emotional, psychological pain or suffering. Examples such as: intimidation by yelling or threatening, humiliation and ridicule, ignore the elderly, isolate the elderly from their friends, and terror.

3) Sexual Violence Against the Elderly

For example, such as making physical contact with the elderly without their consent. The physical contact in question can be in the form of sexual acts. However, actions such as showing the elderly pornographic material, forcing them to watch sexual activity, or forcing them to undress are also forms of sexual violence against the elderly.

4) Neglect of the Elderly

The point is failure to fulfill the task of caring for the elderly. Form this violence is the most common, accounting for more than half of cases violence against the elderly as a whole. This neglect can be intentional or unintentional, depending on factors such as unconsciousness or denial that the elderly need care.

5) Financial exploitation

Financial exploitation of the elderly is an act of utilizing and using the finances or property of the elderly illegally or without their permission. Exploitation Money or financial which is meant by the behavior of the child who asks or take the assets of the elderly by force or without permission. The action can performed by elderly nurses or others. Elderly nurse or caregiver usually such as financial exploitation (Aryati et al., 2019): misusing the elderly's personal money, credit cards, or bank accounts, stealing elderly money and property, forging an elderly signature, and committing identity theft.

As you can see, the thought can be strengthened that an elderly person is someone who has entered their old age at the age of 60 and over. His physical condition is weakened due to age, so that the elderly who rarely leave the house meet their own family members more often. While the dynamics within the family, certain parties are involved energetically due to the age factor which is usually held by young people or children. Young people who have high egos, high ambitions are prone to dominate the family environment. In contrast to people who are over the age of 18 who are vulnerable to being able to adjust to circumstances and able to control themselves, and obey people who are older.

Criminal Sanctions Against Children Who Abuse Elderly

The juvenile justice system contains 2 elements, namely elements of the justice system and elements of children. In this case, the addition of the word child is necessary in order to distinguish the justice system for children from that of the general public, so that the juvenile justice system is justice for children who commit acts against the law. The juvenile justice system is a term from The

Juvenile System, which means a number of related institutions or agencies that are interconnected and join the court which includes prosecutors, legal advisors, child detention centers, supervisory institutions, and child development facilities (Purnomo & Gunarto, 2018).

The legal basis for criminal prosecution of children for today's law enforcers this uses Law Number 11 of 2012 concerning the Judicial System Juvenile Crime and is no longer guided by the provisions stipulated in in the Criminal Code (KUHP). The Criminal Code which regulates the punishment of children is no longer valid. But using a special legal system. *AsasLex Specialis Derogat.Legi Generalis*, which means the law of a special nature overrides the law of a general nature. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has also replaced Law Number 3 of 1997 concerning Juvenile Courts on the basis of the consideration that these regulations are no longer appropriate to the current situation, including the criminal justice system.

Based on the rules of Law Number 11 of 2012, it states the types of crimes as follows:

- a) Article 71 paragraph (1) Principal crimes in Article 71 paragraph (1) against children are divided into 5 parts, namely:
 - 1) Commemorative Crime
In the provisions of Article 72 Law Number 11 of 2012
 - 2) Conditional Crime
In Article 71 paragraph (1) point b. Law Number 11 of 2012 divides punishment with conditions into 3 parts namely, coaching outside institutions, community service, and supervision.
 - 3) Work Training
Regulations in Article 78 paragraph (1) what is meant by institutions that carry out job training are work centers, such as ministries that organize government affairs in the field of employment, education, or social.
 - 4) Development in Institutions
 - 5) Prison
- b) Regulations in Law Number 11 of 2012 Article 81 paragraph (2) explain that imprisonment for a child is a maximum of $\frac{1}{2}$ (one half) of the maximum prison sentence imposed on an adult.

CONCLUSION

The position of children as the younger generation who will continue the ideals of the nation, in the future children come. Child protection is an embodiment of justice in a society, thus child protection is sought in various fields of life. Children are not legal subjects because they are immature so they need protection, especially legal protection. So that children who commit criminal acts are classified as special law overriding general law or adhering to the principle.

Criminal sanctions by children who commit crimes against the elderly are no longer regulated in Articles 351 to 359 of the Criminal Code. But based on the provisions of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System contained in Article 71 to Article 81. *Generalis*) the imposition of a sentence of $\frac{1}{2}$ of the maximum adult sentence. In addition, it also regulates the

sanctions imposed which are determined based on age, that is, for children who aged 14 (fourteen) to 18 (eighteen) years can be subject to criminal sanctions while those aged 8 years to 12 years will only be subject to action sanctions. The law mandates that in terms of the process of resolving children who are in conflict with the law, they must prioritize the diversion process first as referred to in article 5 paragraph (3).

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