

Motives for Selling Human Organs by Children in Indonesia

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Article History: Received: Oktober 27, 2023; Accepted: December 23, 2023

ABSTRACT

Children as one of the human resources and the next generation of the nation, should receive attention in the context of developing children. In connection with child development, legal facilities and infrastructure are needed that anticipate all problems that arise. There are many legal reasons why children are involved in murder cases followed by acts of mutilation. The biggest possibility is that it is easy for irresponsible parties to influence children to commit the crime of assisting premeditated murder. The purpose of this research is to understand the concept of legal responsibility for children who commit criminal acts, to find out the legal protection for children as perpetrators of criminal acts from the perspective of child protection law and to find out the application of the law to accomplices in the criminal act of selling human organs. The research carried out is normative legal research with a normative juridical approach taken from secondary data by processing data from primary legal materials, secondary legal materials and tertiary legal materials. Based on the results of the research and discussion, it explains the concept of legal responsibility for children who commit criminal acts, namely that they can be subject to criminal sanctions. Legal protection for children as perpetrators of criminal acts from the perspective of child protection law is by imposing a penalty of ½ (one-half) of the maximum criminal threat carried out by an adult. Children who commit crimes who assist premeditated murder cannot be sentenced to death or life imprisonment.

Keywords: Body Organs, Criminal Law, Legal Protection, Children

1. INTRODUCTION

Children are very important because children are the potential for human destiny in the future, they are the ones who play a role in determining the history of the nation and are also a reflection of the nation's attitude to life in the future (Soetodjo, 2010). Children as one of the human resources and the next generation of the nation, should receive special attention from the government, in the context of developing children to create strong and quality human resources. In connection with child development, legal facilities and infrastructure are needed that anticipate all problems that arise. The facilities and infrastructure in question relate to the interests of the child and involve deviations in attitudes and behavior that force the child to be brought before the court. The mentality of children who are still in the stage of searching for their identity, is sometimes easily influenced by the situation and conditions of the environment around them, so that if the environment where the child is in is bad, it can influence actions that can violate the law. This of

course can be detrimental to himself and society. Not a few of these actions ultimately lead them to deal with law enforcement officials (Gani & Armansyah, 2016).

Children are part of society, they have the same rights as other people in society which must be protected and respected. Every country anywhere in the world is obliged to provide adequate attention and protection to children's rights, which include civil, economic, social and cultural rights. Viewed from a juridical perspective, children's rights have not received serious attention either from the government, law enforcement or society in general and are still far from what should actually be given to them. This condition is also complicated by the weak implementation of laws regarding children's rights by law enforcement officials themselves. Children as members of society are not immune from crime. For several forms of child crime, the law still provides a solution for resolving disputes over these crimes by means of restorative justice, namely peaceful resolution. Peaceful resolution of crimes committed by children is seen as an act of legal protection for children.

The situation will be different when a child's crime is not as usual, which in the case of this research is being involved in the crime of premeditated murder. As for the Criminal Code, Article 340 regarding premeditated murder reads; "Anyone who deliberately and with premeditation takes the life of another person, is threatened with the death penalty or imprisonment for life or for a certain period, a maximum of 20 years." In this capacity, whether the law with the aim of providing protection for children continues to be implemented or not, is an interesting study. There are many legal reasons why children are involved in murder cases followed by acts of mutilation. The biggest possibility is that it is easy for irresponsible parties to influence children to commit the crime of assisting premeditated murder. Apart from that, if a child is caught committing the crime of premeditated murder, he will be given different legal sanctions than an adult. Apart from that, the behavior of children as perpetrators of accompaniment to premeditated murder is certainly difficult for the police to identify. This condition certainly supports involving children as perpetrators of accessory to planned murder (Abdullah & Fatriansyah, 2022).

Premeditated murder is a crime that cannot be classified as an ordinary crime. In this research, the case of premeditated murder was followed by an act of mutilation with the aim of taking a donor from the murder victim. Academically, mutilation is an action that causes one or more parts of the (human) body to not work properly. Some examples of mutilation include amputation, burning, or flagellation. In some cases, mutilation can also mean cutting up a human corpse.



Children as perpetrators of the crime of assisting premeditated murder are different from adults in terms of criminal responsibility, including responsibility for the crime of premeditated murder. It's just that in the study it is necessary to examine the legal reasons that a child can be involved in a case of abetting premeditated murder. Of course, these reasons are very fundamental in terms of involving children in the crime of assisting premeditated murder. Apart from being easily influenced by various doctrines, children are usually involved in crimes without the children themselves realizing it.

Discussing the involvement of children in the crime of abetting premeditated murder will be better if it is linked to a related case. As material for study in this research, one of the cases of children who helped sell body organs for the criminal act of assisting premeditated murder will be included, namely the case of the murder suspect of an 11-year-old boy who studied selling body organs since he was still in junior high school via the internet. From CCTV (Closed Circuit Television) footage, the victim was invited by the perpetrator to go help clean the house with the lure of Rp. 50,000 in front of Indomaret, Jalan Batua Raya. However, after following the perpetrator on a motorbike, the victim did not return home until he was found dead. It was later discovered that 2 teenagers in Makassar City, ADA (17) and MF (14), were determined to kidnap and kill 11-year-old boy MFS to sell his organs at a high price on a website. The two perpetrators have now been named as suspects and are being held in the Makassar Police Headquarters cell. The elementary school boy was murdered because he was tempted by a website for buying and selling human organs and would get money from the trade in human bodies. It turns out that cases of selling human organs have occurred repeatedly in Indonesia. Of the various motives for selling body organs, the one most often found is economic reasons.

The sale of personal organs and the sale of other people's organs are both criminal offenses. The criminal legal basis for buying and selling human organs is based on Article 65 and Article 192 of Law no. 36 of 2009, Minister of Health Regulation no. 38 of 2016, as well as PP no. 18 of 1981. The government strictly prohibits the sale of human organs. This is regulated in Article 64 paragraph (3) of Law no. 36 of 2009 concerning Health. The prohibition on buying and selling human organs is written more clearly in article 192 of Law No.36/2009. In this article it is also written that perpetrators of buying and selling human organs can even be threatened with a 10 year sentence, as well as a fine of IDR 1 billion. "Any person who deliberately trades in organs or body tissue under any pretext as intended in Article 64 paragraph (3) shall be punished with imprisonment for a maximum of 10 years and a fine of a maximum of IDR 1 billion," it also



explained that human organs that are prohibited from being traded are heart, liver, kidneys, lungs, etc.

Apart from Law Number 36 of 2009 concerning Health, trafficking in human organs in Indonesia is also regulated in the Criminal Code, Law Number 23 of 2002 concerning Child Protection, and Law Number 21 of 2007 concerning Eradication of Human Trafficking (Sakti, 2018). Based on the description above, this research aims to review the Juridical Crime of Murder with the Motive of Selling Human Organs Committed by Children in Indonesia.

2. RESEARCH METHODS

This type of research is normative legal research with a normative juridical or doctrinal approach where law is conceptualized as what is written in statutory regulations (law in books), and research on legal systematics can be carried out on certain statutory regulations or written law. In this research is descriptive analysis which leads to normative juridical legal research or doctrinal legal research, namely research carried out or aimed only at written regulations or other legal materials. The tool used to collect data in this research is through document study with library research. To process data obtained from literature searches and document studies, the results of this research use qualitative analysis. This qualitative analysis is basically an explanation of the theories put forward, so that from these theories several things can be drawn which can be used as conclusions and discussions.

3. RESULTS AND DISCUSSION

Legal Protection for Perpetrators of the Criminal Act of Selling Human Organs by Children

In this case, guaranteeing the rights of a child, the State has provided a legal umbrella, namely Law number 23 of 2002 concerning Child Protection. However, as time goes by, in reality it is felt that this law has not been effective because there is still overlap between sectoral legislation related to the definition of children, on the other hand, crimes against children are rampant in society. However, even though the Indonesian state has made changes to the legal umbrella to improve legal protection for children, the issue of child protection has not yet become a priority agenda. This is because the focus on problems regarding children is often neglected by economic, social and political conflict factors (Lubis, 2019).

The aim of this research is to determine the legal protection for children who are perpetrators of criminal acts of selling human organs committed by children and to know the rights

of children who are perpetrators of criminal acts committed by children. In processing the data the author uses the descriptive analysis method, which is a form of analysis by presenting data obtained in the field in the form of what respondents stated in writing and orally and real behavior, to then be interpreted, compiled, elaborated to obtain answers and conclusions to the problems posed. through logical thinking and can provide a solution to problems that arise regarding the object of research.

The results of this research are the imposition of sanctions on children who are perpetrators of the crime of murder according to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System consisting of crimes and actions. When detailed

Again, the punishment is in the form of a main punishment and additional punishment.

Based on Article 71 of Law no. 11 of 2012 concerning the Juvenile Justice System, the main crimes consist of:

1. The main punishment for children consists of:

a. Warning penalty;

b. Criminal with conditions:

1) construction outside the board;

2) community service; or

3) supervision.

c. Work training;

d. Construction in the board; and

e. Prison.

2. Meanwhile, additional penalties consist of:

a. confiscation of profits obtained from criminal acts; or

b. fulfillment of customary obligations.

The legal rights of children as suspects in murder are that initial contact between children and the police must be avoided in an atmosphere of physical and psychological violence so that in the investigation process the rights of children include: The family of children as suspects must be notified first either by letter or orally. before the arrest process is carried out. Arrest of children is not permitted using tools or weapons of force or coercive authority. Child suspects must immediately receive mandatory and free legal assistance (in arresting the public prosecutor investigators must include a lawyer who will later become the child's legal advisor). Suspects who

are children or minors must immediately undergo an examination process. The right to obtain compensation for damages as a result of a mistake.

Responsibility Crime Against Children Who Commit the Crime of Murder by Selling Human Organs

Law as a social subsystem occupies an important position in the existence of a modern state, and therefore each country tries to build its own legal system. Theoretically-conceptually, in the life of a sovereign country, various historical, socio-cultural, ideological and political national characteristics will always be closely attached to and color the character of the legal system in force in that country. In the Indonesian context, the characteristics of the Indonesian nation, which is diverse, is also the character of the Indonesian legal system. Based on the 1945 Constitution, it is emphasized that the Republic of Indonesia is a state based on law (*rechtsstaat*). As a rule of law, Indonesia always upholds human rights (Atmasasmita, 2010). Always guarantee that all citizens have the same position under the law and government and are obliged to uphold the law and government without exception. Our society consists of several layers, from children, teenagers and adults. Children as the younger generation are expected to be able to lead the nation's future in a better direction and become the foundation for previous generations. Therefore, in an effort to create the nation's survival, it is necessary to provide continuous guidance for its survival, growth and development.

The meaning of children's law is a set of legal regulations that regulate children. The matters regulated in children's law include: Children's court hearings, Children as perpetrators of criminal acts, Children as victims of criminal acts, Child welfare, Children's rights, Adoption of children, Abandoned children, Position of children, Guardianship, Naughty children, and so forth. Based on criminal law, there are legal regulations that specifically regulate children who commit the crime of murder, namely Law Number 11 of 2002 concerning the Juvenile Justice System. So children are limited to ages between 8 (eight) years to 18 (eighteen) years and are not yet married.

Children commit criminal acts, namely if they violate the provisions of existing criminal law regulations. "For example, these provisions violate articles regulated in the Criminal Code (KUHP) or other criminal law regulations spread outside the Criminal Code, such as the crime of murder." Criminal responsibility for children, according to Law Number 11 of 2002, includes basic crimes and additional crimes. Basic penalties include imprisonment, imprisonment, fines or supervision penalties, while additional penalties can include confiscation of certain items and/or payment of compensation. Apart from punishment, children who commit crimes can also be given



action to be returned to their parents, handed over to the State or the social department (Irawan, 2021).

Forms of Legal Protection for Children Who Commit the Crime of Murder by Selling Human Organs

The existence of children has a very important role and position as successors to the family and their descendants, apart from that, children also have a role as an embodiment in continuing the life of the nation. There is a need for protection for children, to maintain the rights inherent in children from all acts that violate the law. The existence of children must be able to be maintained as a gift from God Almighty. Basically, the existence of children must be protected, cherished and loved as one member of the family. Protection of children is regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Child protection is provided as a concrete form of ensuring the growth and development of children, so that they become optimal and advanced children in life. Develop within the family sphere by optimizing all protection from child violence and discrimination.

In essence, children cannot protect themselves from various actions that cause mental, physical and social harm in various areas of life and livelihood. Children must be assisted by other people in protecting themselves considering their situation and conditions, especially in the implementation of juvenile criminal justice which is foreign to them. Children need to receive protection from errors in the application of laws and regulations that apply to them, which cause mental, physical and social harm. Child protection in this case is called legal/juridical protection (legal protection).

Discussing legal protection in Juvenile Criminal Justice, of course we will discuss the legal provisions relating to the entire series of examinations of children as perpetrators of criminal acts, from the time they are still in the Police (investigation and inquiry) to the Prosecutor's Office (prosecution), in the Courts and in Correctional Institutions. In short, Juvenile Criminal Justice is an aspect of child protection. As regulated in Article 3 of Law no. 4 of 1979 concerning Child Welfare where it is expressly determined that in dangerous situations, children are the first to have the right to receive help, assistance and protection. Criminal justice for children must be differentiated from that of adults, in line with what Barda Nawawi Arief said that: Next, Barda Nawawi Arief, referring to Rule 5.1 (Beijing Rules), introduced the aims or targets in the juvenile justice process, namely:

- a. Advancing the general welfare of children (the promotion or the well being of the juvenile)



b. The principle of proportionality

As an explanation of the 2 types of objectives mentioned above, Barda Nawawi Arief then explained the legal system that handles juvenile offenders; especially in criminal justice, there must be more emphasis or priority on the welfare of children and the principle of avoiding the use of merely punitive sanctions. Second, namely the principle which is a tool to curb the use of punitive sanctions in the sense of simply retaliating (just dessert).

Juvenile Criminal Justice is regulated separately in Law Number 3 of 1997 concerning Juvenile Court, deviating from the Criminal Procedure Code, bearing in mind that children have special characteristics that are not the same as adults and need special treatment by taking into account the interests of children, so that children as perpetrators of criminal acts are not harmed physically or mentally. .

Every child needs guidance and protection in order to ensure complete, harmonious, harmonious and balanced physical, mental and social growth and development. This development and protection of children does not exclude child criminals, often referred to as "bad children". Children who commit criminal acts, in this case as specified in Article 1 (number 3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states "Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve)) years, but not yet 18 (eighteen) years of age who is suspected of committing a criminal act."

Meanwhile, from the perspective of criminal science, Paulus Hadisuprpto believes that criminal penalties for delinquent children tend to be detrimental to the child's mental development in the future. This detrimental tendency is the result of the effects of criminal punishment, especially imprisonment, in the form of stigma (bad label). Barda Nawawi Arief also stated that imprisonment can create a stigma that will continue even if the person concerned does not commit another crime. The impact of applying stigma to children will make it difficult for them to return to being "good" children.

In this regard, R.M. Jackson even stated that imprisonment is a relatively ineffective type of punishment. Based on the results of comparative studies of criminal effectiveness, the comparison rate of the average repetition or reconviction rate of people who commit crimes for the first time is inversely proportional to the age of the perpetrator. The highest reconviction rate was seen in children, reaching 50 percent. This figure is even higher after people are sentenced to prison than to non-prison sentences.



Children who are in conflict with the law, whether as victims or perpetrators, must have their rights protected by the government and must not be discriminated against. Children who commit criminal acts or carry out acts that are declared prohibited for children need to be handled carefully. The manifestation of justice is where the implementation of rights and obligations is balanced, the implementation of rights and obligations for children who commit criminal acts needs to receive assistance and protection so that it is balanced and humane. It should be noted that obligations for children must be required by their situation, condition, mental, physical, social circumstances and abilities at a certain age. One of the processes of protecting children in conflict with the law, where the child is the perpetrator, the roles of parents, legal advisors, community counselors, public prosecutors and judges are a system that is mutually relevant for the implementation and protection of children's rights in the criminal justice process.

There is an obligation for the government and society to provide attention and supervision to the survival of a decent life for the growth and development of children, as the nation's next generation. Law Number 3 of 1997 concerning Children's Courts is intended to protect and protect children who are in conflict with the law so that children can face their long future and provide opportunities for children so that through coaching they will obtain their identity to become independent, responsible, human beings. and useful for oneself, family, community, nation and state.

Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System is a change to Law Number 3 of 1997 concerning Juvenile Courts (State Gazette of the Republic of Indonesia of 1997 Number 3, Supplement to the State Gazette of the Republic of Indonesia Number 3668) which was carried out with the aim of ensuring that justice can be realized that truly guarantees the protection of the best interests of children who are in conflict with the law as the nation's successors.

Article 340 of the Criminal Code reads: Any person who intentionally and with premeditation takes the life of another person, is threatened with premeditated murder, with the death penalty or life imprisonment or for a certain period, a maximum of twenty years.

Article 56 1 of the Criminal Code reads: Those who intentionally provide assistance when a crime is committed are punished as aides to a crime. Articles 1 to 3 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, reads: Children in Conflict with the Law, hereinafter referred to as Children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a criminal act.



Based on the provisions of Article 340 of the Criminal Code in conjunction with Article 56 1 of the Criminal Code, children who assist in premeditated murder are threatened with the death penalty or life imprisonment or for a certain period, a maximum of twenty years. Meanwhile, the judge in his decision only sentenced him to 10 years in prison (Purwoleksono, 2015). The meaning of this is that criminal sanctions for children who commit the crime of assisting premeditated murder are under the threat imposed by Article 340 of the Criminal Code in conjunction with Article 56 1 of the Criminal Code. One thing that needs to be considered in relation to the implementation of punishment against children is:

- a. Imprisonment for naughty children who commit criminal acts (Art 1 to 3 Law no. 11 of 2012 concerning the Juvenile Criminal Justice System) a maximum of ½ (one-half) of the maximum threat of imprisonment for adults in terms of the maximum threat of imprisonment for criminal acts carried out in accordance with those specified in the Criminal Code (KUHP) and other laws.
- b. If the naughty child commits a criminal act that is punishable by punishment death or life imprisonment and has reached the age of 12 (twelve) years, then the maximum prison sentence that can be imposed is 10 (ten) years and if you have not reached the age of 12 (twelve) years you can only action was taken in the form of handing it over to the state to follow education, construction, and job training.
- c. If the naughty child commits a crime that is not punishable death or life imprisonment and has not reached the age of 12 (twelve) years, then the naughty child is punished with one of the actions of Article 24, namely:
 - 1) Return it to parents, guardians or foster parents.
 - 2) Submitting to the state to follow education, construction, and job training, or.
 - 3) Submit to the Department of Social Affairs or social organizations engaged in education, development and job training.
- d. If the naughty child is sentenced to imprisonment for a maximum of 1 (one) year, the judge can impose:
 - 1) Conditional sentence with a maximum term of 3 (three) years:
 - a) The general condition is that delinquent children will not commit any further crimes while serving a conditional sentence.
 - b) The specific condition is to do or not do certain things specified in the judge's decision while still paying attention to the child's freedom. Basically, these special conditions include not



being able to drive a motor vehicle, or being required to participate in activities programmed by the Correctional Center and the length of the special conditions is shorter than the conditional criminal time for the general conditions.

2) Supervision while serving the conditional sentence period is carried out by the Prosecutor, while guidance is provided so that delinquent children comply with the requirements determined by Community Counselors with the status of Correctional Clients and Delinquent Children can attend education at school as intended in the National Education System Law.

If so, then it can be understood the reason why the judge imposed a 10 year sentence on a child who assisted in premeditated murder, namely the provisions contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Therefore, in dealing with and dealing with various acts and behavior of delinquent children, including children who assist in the crime of premeditated murder, it is necessary to consider the position of children with all their special signs and characteristics. Even though children have determined their own steps based on their thoughts and desires, the surrounding circumstances can influence their behavior. Therefore, in dealing with the problem of naughty children, including children who assist in the crime of premeditated murder, parents together with the surrounding community must be more responsible for the guidance, education and development of the child's behavior. Apart from that, for the sake of children's mental growth and development, it is necessary to determine the differences in treatment in procedural law and criminal threats (Irawan, 2021).

In the regulation of this issue there is an exception to the provisions regulated in KUHP Articles 24 to Article 29 where the implementation of detention is determined in accordance with the interests of the child. Differences in criminal threats regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which do not follow the criminal provisions in Article 10 of the Criminal Code, and make sanctions independently. The main crimes that can be imposed on naughty children according to Law Number 3 of 1997 in Article 23 paragraph (2) consist of:

- a. Maximum prison sentence is 10 years.
- b. Criminal Cage: V.
- c. Criminal Fines.
- d. Criminal Supervision

For delinquent children, including children who assist in premeditated murder, the death penalty or life imprisonment cannot be imposed, for children determined by the Criminal Code, the sentence is ½ (one-half) of the maximum penalty imposed by an adult, whereas The death penalty and life imprisonment are not applied to children, which can be imposed on the child for a maximum of 10 (ten) years. The differentiation of treatment and threats regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System further protects and protects naughty children, so that they can face a long future. Apart from that, this distinction is intended to provide opportunities for children so that through coaching they will gain their identity to become independent, responsible and useful human beings for themselves, their family, society, nation and state.

Efforts to overcome criminal acts committed by children with the motive of selling human organs

Children are the successors of the nation who have the responsibility to perpetuate prosperity in the future. With this rationale, it is necessary to protect children so that in the future children will have the ability and readiness to shoulder such heavy responsibilities. The treatment in question includes protection child welfare wages that pay attention to children's rights as human beings without discrimination in any aspect. The protection of children who are faced with legal problems predominantly refers to Law Number 11 of 2012 concerning the Juvenile Justice System. Apart from that, the aim of the child protection provided is manifested in Article 3 of Law Number 35 of 2014 concerning Child Protection, namely to provide guarantees for the fulfillment of children's rights to live, grow and develop, and to involve themselves maximally by paying attention to human dignity. (Shodiqin, 2015).

It is not uncommon for children to have deviant behavior from a legal perspective by carrying out actions that are prohibited by law. This can be caused by various factors such as negative influences from outside the child that arise due to fast-paced development, the influence of globalization in the aspect of communication and information technology. . So as a result of the absence of this assistance, it has an influence on fundamental social changes in children's values and behavior. Self-defense mechanisms against negative influences derived from developments over time which can come from parents, guardians, foster parents or other parties who can participate in protection and guidance. The delinquency in question is known as "juvenile delinquency", apart from that it can also be interpreted as behavior that violates norms in the mild category and deviant behavior. Delinquency is often also known as juvenile delinquency which is



combined with abnormalities in behavior, or as juvenile acts/actions. The teenagers referred to in this discussion are children aged 12 (twelve) years and 18 (eighteen years) who are not yet married.

Children in the legal system must be given special and different treatment from adults because, if not, the same treatment can put children in a position that is detrimental to children. More specifically in the case of children who commit the crime of murder, in this process it cannot be denied that children receive pressure during the investigation of the case which will certainly affect the child's mentality. In this process the child will experience fear and stress, which in turn affects the child's creativity and communication skills. One of them is a child case related to the crime of murder. Cases of murder committed by children will certainly disturb comfort and order in society and need special attention, this is because (children who are in conflict with the law) should be avoided as much as possible from prison sentences. Through Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) law enforcement officials will try to find the best solution for the child (Nugraha & Handoyo, 2019).

Diversion will be pursued maximally by investigators in order to prevent children from entering the SPP (Criminal Justice System), because of the bad consequences that the child (children in conflict with the law) can suffer if they enter the SPPA. The label of murder will be given by society to the child (a child who is in conflict with the law), in this case it will really disrupt the child's growth and development. The juvenile criminal justice system exists as an embodiment of the criminal justice system which is essentially for enforcing the criminal law system. A situation like that described above will be very detrimental to the interests of children as "subjects of law" which will certainly be very detrimental to the interests of children. Don't let your child become more delinquent after serving his sentence. This is done to prevent children who have been involved in criminal cases from having obstacles in socializing with society, so that the children can then dedicate themselves to the nation and state and all their bloodshed. So, with this way of thinking, handling children's cases, especially for law enforcement officers, requires a special form of attention. Especially in the examination process which cannot be equated with the examination given in adult cases.

Diversion is considered as an alternative solution to the problems that arise from the conditions above. Diversion is an action/treatment carried out with the aim of moving the resolution of a case from formal resolution to informal resolution or providing different treatment to perpetrators of child crimes in a positive sense by using the juvenile justice system or placing child perpetrators of crimes in prison. outside the criminal justice system. This means that not all



cases involving children/adolescents must be resolved through formal channels in the form of litigation, and providing guarantees regarding the availability of alternative solutions based on restorative justice by considering the best interests of the child but not ignoring the justice aspect of the victim. Diversion is carried out on the basis that law violators (offenders) have the opportunity to return to being virtuous human beings who have values and norms that are in accordance with what lives in society through non-formal channels with inclusive involvement of community resources and roles. Diversion as an alternative can be interpreted as an effort to enforce justice against children who have committed criminal acts. The first research was conducted by Hambali (2019) and found that restorative justice as an alternative solution can provide protection for children, as well as through solution the Children remain criminally responsible without their rights as children being reduced. The advantage of the research is that it uses restorative justice as a form of criminal responsibility for children, while the disadvantage is that it does not clarify which criminal acts can be carried out with restorative justice. The second research, conducted by Nugraha and Handoyo (2019), found that the Balikpapan police could exercise discretion in the form of diversion in handling narcotics crimes committed by children. The advantage of this research is that it provides an overview of the handling of narcotics crimes committed by children. The drawback is that it does not yet describe the boundaries of what kind of narcotics crime can be carried out for diversion, whether there are all of them, whether there are certain things.

Study third is done by Or (2019) find that criminal responsibility for children who commit murder is a minimum of over 12 years and there is a judge's decision, as well as the stigma of children committing the crime of murder in society as something bad and deviant from society. The advantage of this research is that it explains the responsibility for children as perpetrators of criminal acts of murder with the motive of selling body organs. The weakness is that it does not explain the handling of children at every level, the crime of murder in the Criminal Code, the sanctions that can be imposed on children, and how to protect children so that they can still receive legal protection. Based on the previous research above, in contrast to the research attempted to be discussed in this article, there is an emphasis on the crime of murder committed by children. Furthermore, what Ali researched focused more on the juridical review of responsibility for these criminal acts. In this research, this research highlights the handling of criminal acts of murder where the perpetrator is a child through the means of restorative justice with a focus on the mechanism for handling these criminal acts. This was done with the aim of providing an overview



and analyzing what it is like to handle murders committed by children using a restorative justice approach.

1. Handling of Murder According to Criminal Offenses in General

From a linguistic perspective, the term criminal act has its roots in strafbaarfeit, however there is no related explanation in the Criminal Code (KUHP). Criminal acts are generally combined with the use of the word offense in Latin, called delictum. The legal dictionary lists the limitations of offenses which are defined as offenses that can be punished on the basis of being a form of violation of the law (criminal act). Strafbaar Feit or criminal act itself consists of three syllables, the first is straf with the meaning of criminal and legal. , secondly baar which means can, and thirdly feit which is interpreted as violation and action (Irawan, 2021).

Moeljatno in his writings stated that criminal law is a fundamental element of law as the basis and rules used to determine actions that are not permitted to be carried out which constitute a prohibition with the threat of sanctions for a certain crime for anyone who violates the prohibition within the time and conditions. which determines whether a person who violates the prohibitions in question can be subject to criminal sanctions as regulated in the prohibition, and in what manner the criminal sanctions can be carried out against the violator.

Experts do not specifically explain the purpose or definition of murder, but many categorize murder as a crime against the life (soul) of another person. Crimes against life (misdrijven tegen het leven) are attacks committed against other people's lives or dangerous actions against other people's lives (Hati et al., 2019). So, from this perspective, human life is the goal of the legal protection that will be provided. Intentionally causing the loss of another individual's life, in the Criminal Code is stated with the theme of murder which is specifically stated in Article 338 of the Criminal Code, in relation to an act that causes the loss of another individual's life, a perpetrator does something or a series of actions that resulting in the death of another person provided that the opzet from the perpetrator has the result, namely the death/loss of the individual's life (Hidayah, 2014).

Crimes against one's own life are specifically stated in Book II Title XIX (Article 338- Article 350). Life has a similar meaning to soul. Soul itself has several meanings, including: cause of life, soul and spirit (as the cause of human life as a creature), while soul has the meaning of the human spirit which includes the entire life of a human being. So that criminal acts against life are analogous to related and related criminal acts with human life or actions that cause the loss of



human life is called murder. Based on the provisions in the Criminal Code, criminal acts themselves can be differentiated into several aspects, namely:

- a. Criminal acts against human souls;
- b. Criminal acts against newborn/born babies;
- c. Criminal acts against the soul of a prospective child who is/is still in the womb.

When viewed from the perspective of the element of intentionality (*dolus*), when referring to the theory of will (*wilstheorie*) it is a will and intention until the realization of an action. Deliberation itself is the will to carry out an act that meets certain criteria or elements. Criminal acts themselves, based on these elements, are differentiated into criminal acts committed intentionally; a criminal act committed intentionally with an aggravating element; the wishes of the murdered; providing assistance or encouraging people to commit suicide.

The handling that has been carried out in murder cases in general is through:

- a. Research

Handling of murder cases at the investigation stage is carried out by police officers. The task in question is related to receiving reports and arranging, stopping someone who is suspected of being investigated. This is specifically regulated in Article 1 point 5 of the Criminal Procedure Code which is referred to as a series of investigations with the aim of searching for and finding incidents with the presumption that the results of the search constitute a criminal act which is then used to determine whether or not a criminal act can be followed up with an investigation according to the rules. method as regulated in the Criminal Code. If it is related to the theory of criminal procedural law proposed by van Bemmelen, investigation is the first stage of the 7 (seven) stages in criminal procedural law with the aim of seeking and discovering the truth.

- b. Investigation

Once it is determined that an act committed is a criminal act of murder, the police will then carry out an investigation. Investigations are carried out on the basis of Article 1 point 2 of the Criminal Procedure Code which is defined as a series of investigative actions in terms of and in accordance with the procedures as regulated in the Criminal Code which are intended to search for and collect evidence which will then become clues explaining the criminal act that has occurred and to find the suspect. of the criminal act. Investigation is a preliminary or preliminary examination activity (*vooronderzoek*)

from the series of law enforcement which should focus on searching or collecting evidence in the form of facts regarding arrests and searches, under necessary conditions these activities can be



followed by detaining the suspect and confiscating all items that are considered to be related to what has happened and is currently happening. investigated.

c. Prosecution

After strong evidence is collected through the investigation process, the evidence is handed over to the prosecutor's office. After the crime of murder was transferred to the prosecutor's office, it was then transferred to the district court to proceed to the trial stage. During the trial stage, the public prosecutor (JPU) will bring charges against the defendant based on the mistakes the suspect committed. Prosecution itself in Article 1 point 7 of the Criminal Procedure Code is defined as an action carried out by a public prosecutor with the aim of transferring it to the district court in accordance with its authority in accordance with the procedures regulated by law with a request to then be examined and decided by a judge in a trial before the court. . Apart from that, Wirjono Prodjodikoro emphasized the prosecution process which is the activity of prosecuting a defendant before a criminal judge which is carried out by handing over the defendant's case and the case files to the judge on duty, requesting that the judge conduct an examination, and then make a decision on the criminal case. against the defendant (Marzuki, 2019).

Next, criminal threats aimed at children in general are as determined in the Criminal Code and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or by *lex generalis* and *lex specialis* it is determined that children are sentenced to ½ (half) of the maximum adult sentence, apart from that Life imprisonment and death penalty are not imposed on children. In imposing sanctions, there is a classification of sanctions based on the child's age at the time of committing the crime which is divided into: children whose biological age is 12 (twelve) years to 18 (eighteen) years can be punished, but children whose biological age is 8 (eight) years-12 (twelve) years will be subject to sanctions in the form of action. The law also states that the process of handling cases of children in conflict with the law must be carried out by prioritizing the diversion process as stated in Article 5 paragraph (3). SPPA Law.

2. Handling Murder Committed by Children Through Restorative Justice

Enforcing legal protection for children who have problems with the law, referring to the opinion of Abdul Hakim Garuda Nusantara, must be done with an approach to protecting children in Indonesia with a broader approach by including consideration of economic aspects, social aspects and cultural aspects in it so that the protection can provide justice and fulfill children's rights. Meanwhile, based on Arif Gosita's opinion, child protection is a form of effort carried out to create conditions that support the implementation of the rights and obligations of each child for the



sake of their growth and development process which includes physical and mental aspects, as well as social aspects. So that in the end protection for children is carried out not only to protect the child physically, but includes broader protection including mental and social which is carried out by paying attention to economic, social and cultural aspects with the hope that children will not have obstacles in carrying out their rights and obligations to grow and develop. become a complete human figure based on the potential he has and there is nothing that will hinder this growth and development, including when children are in conflict with the law (Irawan, 2021).

Dealing with the law, for children, can have various impacts on the child's physical, mental and social well-being, especially if the problem is resolved through formal channels such as the courts. Restorative justice exists to be an alternative pathway for resolving criminal problems which can be interpreted as a non-formal resolution pathway. Restorative justice as regulated in Article 24 paragraph (1) of the Covenant on Civil and Political Rights states that all and every child has the right to obtain protection based on the assumption that the child is a minor, which is a strong legal basis for judges in terminate the child's case. The decision containing the termination of the criminal case because the child is a minor is declared valid because the judge himself has the freedom to give a decision when referring to Article 28 paragraph (1) of Law Number 4 of 2004 which gives the judge the authority to explore and follow, and understand the values law and the value of justice grow and develop in the social order (Shodiqin, 2015).

When referring to international law, in the Beijing Rules, especially in Point 11.1 itself, it is stipulated that changing the law enforcement process from formal channels to non-formal channels through restorative justice in handling children's cases is allowed to be chosen by the judge. Restorative justice is the goal of a judge in resolving children's cases to maximize protection for the child's future in accordance with the principles of protection regulated in the Beijing rules, which: give priority to the best interests of the child; preventing children from criminal justice (formal); minimize all forms of intervention for children, police officers, prosecutors, and judges and other law enforcement officials should use discretion when handling children's cases; Apart from that, criminalization and punishment of children should be avoided except in situations where there is an impact in the form of fatal damage to the child or other people; and providing free legal assistance.

Restorative justice is a form of response to the development of the criminal justice system which places emphasis on the need for community contributions and marginalized victims who are integrated into the criminal justice system mechanisms used today. Restorative justice is similar to



the handling of non-penal cases in that it is criminal prevention by not using criminal law (prevention without punishment) which is also an effort to influence the public's perspective on crime and punishment using mass media.

Criminal policy through a non-penal approach is correlated with preventive actions against the occurrence of crimes. Thus, the aim of optimizing non-penal facilities is related to the conducive factors that cause crime to arise, related to problems or social conditions that influence the perpetuation of crime, either directly or indirectly. So, if assessed on the basis of criminal policy for dealing with crime, this non-penal means approach has a very strategic position and has a vital role which has become mandatory to be carried out intensively and effectively.

In essence, juvenile justice has a prevention philosophy due to the existence of Law Number 3 of 1997 concerning Juvenile Courts which was subsequently updated with Law 11 of 2012 concerning the Juvenile Justice System (Indonesia, 1997). Philosophically, juvenile criminal justice focuses on efforts to protect and rehabilitate children (emphasizing rehabilitation on youthful offenders) which interprets children as entities that are attached to a set of limitations relative to adults. Children as entities with limitations require ongoing protection from the state and society until the child is deemed capable of being responsible for himself and growing according to his potential. In the event that a child has committed a criminal act, it is necessary to have a special criminal justice strategy system that is adapted to the child's conditions, namely a criminal justice system strategy that minimizes intervention from the formal criminal justice system and should be known to the general public.

Diversion as part of the approach to dealing with criminal acts through restorative justice is actually aimed at seeking peace between the victim and the child as the person who committed the crime; settle children's cases outside of court; protect children's independence from all forms of deprivation; maximizing community participation; and foster a sense of responsibility in children. However, in its implementation, it is still necessary to pay attention to the categories of delinquency committed by children which can be grouped into three categories, namely:

- a. Minor crimes: Actions committed by children are said to be minor crimes, including minor theft, minor assault that does not cause injury, or minor damage to property owned.
- b. Moderate crimes: Actions categorized as moderate crimes are crimes in the form of a combination of all conditions in a consideration of whether a case is resolved using diversion or not.



- c. Serious crimes: Actions that are included in serious crimes are manifested in cases of sexual assault and physical assault with serious injuries as a result of the action.

In implementing diversion against children as perpetrators of criminal acts, of course there are several requirements that must be met first, such as the child being the first time perpetrator of a criminal act; have a relatively young age; the diversion program carried out for children has obtained permission from the parent/guardian, or the child is the perpetrator of a criminal act; the categories of crimes committed by children can vary from minor to serious crimes, although only in certain cases; the child who is the perpetrator has admitted that he is guilty of a criminal act/crime; the contribution made by the community is in the form of support and the community has no objections to the transfer of the inspection carried out; In conditions where the implementation of diversion is declared a failure, the child as the perpetrator is investigated through formal channels.

In murder cases, of course, diversion can also be carried out while still fulfilling the requirements stated above. If in the end criminal sanctions must be imposed on children, these sanctions cannot be equated with the treatment given to adults. Referring to the provisions of Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, there are various types of crimes and actions which include basic crimes for children (warning crimes, conditional sentences: guidance outside or inside the institution, community service or in the form of supervision, job training, and prison); additional punishment (confiscation of property derived from profits obtained through criminal acts, or fulfillment of customary obligations); If a child is threatened with cumulative punishment such as imprisonment and a fine, the punishment in question is replaced with job training, the punishment imposed on the child is not permitted to violate the child's honor and dignity, further provisions relating to types of punishment and criminal acts for children are further regulated through regulations. government.

In the description above, it is stated about warning punishment that when referring to the provisions of Article 27 of the SPPA Law, warning punishment itself is a light punishment that does not limit the child's freedom, apart from that, Article 73 regulates that the punishment is conditionally given by the judge, if the punishment is imprisonment. only imposed for a maximum of 2 years, apart from that, when carrying out a criminal decision, there are general and specific requirements. The general conditions referred to are the requirements that the child will never commit a criminal act during the criminal period with these conditions, while the specific requirements referred to are requirements that prohibit the child from doing certain things as



determined by the judge through a court decision while still taking into account the freedom they have. child. Apart from that, the length of the sentence with special conditions has a longer duration compared to the sentence with general conditions, namely a maximum of 3 years; and while serving a sentence with these conditions, the public prosecutor provides supervision, in addition to that the community counselor provides guidance so that the child continues to carry out and fulfill the requirements that have been previously determined; Apart from carrying out the specified requirements, children also have the obligation to fulfill 9 years of compulsory education.

If interpreted more broadly, juvenile criminal justice is a criminal justice system that is adapted to uphold rights and safety and prioritize the physical and mental well-being of children. So imprisonment should be the ultimum remedium or last legal remedy implemented with a short sentence period and is only applied in cases that are considered extraordinary if committed by children. If a child is the perpetrator of a crime of murder who has been arrested by the police, diversion can be carried out by police officers in the form of discretion towards the child without forwarding the case to the public prosecutor for prosecution.

4. CONCLUSION

Legal protection for children as perpetrators of criminal acts from the perspective of child protection law is by imposing a penalty of ½ (one-half) of the maximum criminal threat carried out by an adult. Children who commit crimes who assist premeditated murder cannot be sentenced to death or life imprisonment. Criminal regulations for the sale of human organs from living donors are contained in Indonesian statutory provisions outside the Criminal Code, namely Law Number 36 of 2009 concerning Health, Law Number 21 of 2007 concerning Eradication of the Criminal Act of Trafficking in Persons and Government Regulation Number 18 1981 concerning Clinical Post-mortem and Anatomical Post-mortem and Transplantation of Human Body Instruments or Tissue. This government regulation has not been changed in accordance with Article 15 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, there should be no criminal sanctions in the government regulation. There is a Draft Government Regulation regarding organ and/or tissue transplantation to replace the old government regulation. Transplants are carried out for humanitarian purposes and are carried out by authorized medical personnel and with the consent of the patient or his family.

REFERENCES

- Abdullah, M. Z., & Fatriansyah, F. (2022). Juridical Analysis Regarding the Criminal Act of Buying and Selling Body Organs. *Legality: A Law Journal*, 14(1), 156–165.
- Atmasasmita, R. (2010). Contemporary criminal justice systems. Kencana.
- Gani, R. A., & Armansyah, Y. (2016). Law Enforcement in Cases of Buying and Selling Body Organs in Indonesia. *PHENOMENON*, 8(2), 159–180.
- Hati, A. A. I. D. P., Yuliantini, N. P. R., & Mangku, D. G. S. (2019). Juridical Review Regarding Applications for Lethal Injection (Euthanasia) in View from the Criminal Code. *Journal of the Judicial Community*, 2(2), 134–144.
- Hidayah, C. (2014). Penalty System Policy in Efforts to Overcome the Crime of Murder While Drunken. *Law Reform*, 9(2), 49–65.
- Indonesia, R. (1997). Law Number 3 of 1997 concerning Children's Courts. *State Gazette of the Republic of Indonesia Number*, 3.
- Irawan, C. N. (2021). Handling of the Crime of Murder Committed by Children Based on Restorative Justice. *Usm Law Review Journal*, 4(2), 672–687.
- Kholiq, A., Arief, B. N., & Soponyono, E. (2015). Limited Imprisonment: An Idea and Reorientation of Policy Formulation of Types of Criminal Legal Sanctions in Indonesia. *Law Reform*, 11(1), 100–112.
- Lubis, M. A. (2019). Legal Protection for Naughty Children Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. *Journal of Research*, 1(01), 15–32.
- Marzuki, M. P. M. (2019). Ian McLeod, Terry Hutchinson and Jan Gijssels and Mark. *Law of Contracts*, 37.
- Nugraha, W., & Handoyo, S. (2019). Application of Restorative Justice in Handling and Resolving Narcotics Crimes Committed by Children in Balikpapan City. *Journal de Facto*, 6(1).
- Purwoleksono, D. E. (2015). *Criminal Procedure Law*. Airlangga University Press.
- Sakti, R. W. (2018). The Crime of Transplanting Human Organs in View of Law No. 36 of 2009 concerning Health. *Lex Crimen*, 7(10).
- Sodiqin, A. (2015). Restorative Justice in the Crime of Murder: Perspectives on Indonesian Criminal Law and Islamic Criminal Law. *Ash-Syir'ah: Journal of Sharia and Legal Sciences*, 49(1), 63–100.
- Soetodjo, W. (2010). *Child Criminal Law*, Bandung: PT. Refika Aditama.