

LEGAL IMPLICATIONS REGARDING THE MURDER CASE OF A FIVE-YEAR-OLD GIRL IN LEBAK BASED ON THE INDONESIA CRIMINAL CODE

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Abstract

Indonesia is a rule-of-law nation that protects its citizens human rights through its legislation. There are rules regarding the acts prohibited since in the preamble of the 1945 constitution "Protecting all the Indonesian people and the entire territory of Indonesia" highlights Indonesia's national objective. However, even with the available legislation, there are still violations happening, with one of them being the murder case of a five-year-old girl in Lebak. This research uses the normative method, which uses sources such as legislation, court decisions, and legal theory. The perpetrator's action violates the social contract principles which may lead to disruption and shows the legislation that could be used to bind the perpetrators.

Keywords: action violates, human rights, violations

BACKGROUND

According to Article 1 paragraph (3) of the 1945 Indonesian Constitution, Indonesia is a rule-of-law nation¹. Every element of life in the Republic of Indonesia must be governed by the law since it is a nation founded on the idea of the rule of law, and all laws and their derivatives are applicable there². This also implies that Indonesia, a nation that upholds the rule of law, protects human rights via its constitution and judicial rulings. This demonstrates that Indonesia protects its people's human rights from any human rights violations.

As a nation governed by the principle of the rule of law, this prohibition is written and stated in the Indonesian constitution. The 1945 constitution, specifically the preamble of 1945 constitution, the preamble of the 1945 constitution distinctly outlines one of the fundamental objectives of the Indonesian state: "Protecting all the Indonesian people and the entire territory of Indonesia". This constitutional mandate demonstrates the state's fundamental obligation to protect its citizens, leading to the establishment of legal frameworks that prohibit human rights violations. Violations of human rights as stated before are prohibited and so, acts of death threats, assault, and murder are illegal in the face of the law. The constitutional reference to 'Indonesian people' involves children within its scope, thereby extending constitutional protection to the younger generation. The significance of protecting children is particularly emphasized given their

¹ Juanda, O., & Juanda (2023) The Ideal Law State Concept in Indonesia ; The Reality and The Solution. Journal of Law Politics and Humanities, Vol. 3, No. 2, p. 253. <https://doi.org/10.38035/jlph.v3i2>

² Indonesia sebagai negara hukum - UMSU Fakultas Hukum Terbaik. (2023, June 26). Pascasarjana UMSU. <https://pascasarjana.umsu.ac.id/makna-indonesia-sebagai-negara-hukum/#:~:text=Indonesia%20sebagai%20negara%20hukum%20memiliki,yang%20berlaku%20di%20wilayah%20NKRI.>

role as the nation's future bearers, adding greater importance to the legal safeguards established for their protection.

The Indonesian legal framework establishes specific provisions for child protection, primarily through Article 80 paragraph (3) of Law Number 35 of 2014 concerning Child Protection³. The regulation further addresses death threats through Article 336 of the Indonesian Criminal Code, which explicitly prohibits acts of death threats⁴. The legislative framework categorizes acts of torture into six classifications within the Criminal Code⁵. There is common assault (Article 351⁶), light assault (Article 352⁷), planned assault (Article 353⁸), severe assault (Article 354⁹), planned severe assault (Article 354 paragraph 1 of the Indonesian Criminal Code¹⁰), and assault against a person (Article 351, 353, 354 of the Indonesian Criminal Code). Furthermore, the Indonesian Criminal Code differentiates between two categories of murder: standard murder, which is addressed under Article 338, and premeditated murder, which falls under the provisions of Article 340.

The Perpetrators, Saenah (33) and Rahmi (38) have known the victim's mother A for quite some time. Saenah and Rahmi are known to be in a same-sex relationship and both use online loans with a total of 75.000.000 using A's identity. It all started when Saenah is said to be jealous of Rahmi being close to A and due to this hatred is formed. Also because of the usage of A's identity to make online loans, A often asks Rahmi and Saenah to pay off their debts which makes them more upset. Moreover, it is known that A usually scolds Emi's child which makes her upset. Saenah and Rahmi then persuaded Emi (23) to help take revenge on A with the promised payment of 50.000.000 and with the help of two others, Ujang (22) and Yayan (32) with each getting a payment of 100.000 per person.

The murder case started when Saenah and Rahmi sent a threatening message via WhatsApp to A. The message was filled with threatening messages to kidnap and murder A. Then Saenah, Emi, Rahmi, Ujang, and Yayan targeted A for murder, however, it didn't work out. When it didn't work out, they shifted the target to her child instead.

On Tuesday (17/9) Saenah and Emi hid around the A's home, and when the A went out, they directly kidnapped her child. When they tried to kidnap the child, the victim, which is the child, started fighting back by trying to bite, but then they restrained and taped her mouth shut. Saenah then began to hit, suffocate, and sit on the child's head. Meanwhile, Emi helped with taping, restraining, and sitting on the victim's head.

After the child has been rendered unconscious, they put her in a container before moving her into a backpack. Realizing that the child was dead, Saenah and Emi then contacted Rahmi to divert the victim's parents' attention. Saenah then carried the backpack with the victim's body to Kramawatu, Serang, where Ujang and Yayan helped dispose of the victim's body and any evidence related to the murder.

³ Undang-Undang Pasal 80 ayat (3) Undang-Undang RI Nomor 35 Tahun 2014 tentang Perlindungan Anak

⁴ Pasal 336 Kitab Undang-Undang Hukum Pidana

⁵ Wahyuni, W. (2022, June 7). Jenis-Jenis Penganiayaan dan Jerat Hukumnya. Jaringan Dokumentasi Dan Informasi Hukum Sukoharjo. <https://jdih.sukoharjokab.go.id/berita/detail/jenis-jenis-penganiayaan-dan-jerat-hukumnya>

⁶ Pasal 351 Kitab Undang-Undang Hukum Pidana

⁷ Pasal 352 Kitab Undang-Undang Hukum Pidana

⁸ Pasal 353 Kitab Undang-Undang Hukum Pidana

⁹ Pasal 354 Kitab Undang-Undang Hukum Pidana

¹⁰ Pasal 354 (1) Kitab Undang-Undang Hukum Pidana

RESEARCH METHOD

The type of research used in studying “Legal Implications Regarding the Murder Case of a Five-Year-Old Girl in Lebak based on the Indonesia Criminal Code” is the Normative method. Normative research, also known as doctrinal legal research or theoretical legal research, focuses on written studies that utilize secondary sources such as legislation, court decisions, and legal theory. It often takes the form of scholarly scientific work. This type of research examines various aspects including theory, history, philosophy, comparison, structure and composition, scope and content, coherence, overview and explanation chapter by chapter, the formalities, and the binding force of legislation and the legal language used.¹¹

Primary data

The primary data sources used in this research are data obtained from Indonesian legislation (UU) and journals related to the discussed case.

Secondary data

Secondary data is data that has been obtained and collected by someone else for a certain purpose.¹² The secondary data sources are taken from articles, news, and other internet sources relevant to the discussion.

RESULT AND DISCUSSION

Identify the legal implications regarding the murder case of a five-year-old girl in Lebak

In Indonesia, the government isn't free to do whatever it wants. Our system is based on the rule of law, meaning the government must follow the laws and procedures set out for it¹³. Every government action, big or small, must obey the law. The government's power is limited by these laws, which helps prevent abuse of power and keeps the government accountable. This means the government can only act according to existing, publicly known laws, stopping them from making unfair or arbitrary decisions. This system of laws protects the rights and freedoms of all Indonesians, making sure the government is checked and its actions are reviewed, leading to a fairer and more just country. Jimmy Asshiddiqie stated that there are five theories of state sovereignty, one of which is the theory of people's sovereignty.¹⁴ According to the theory of people's sovereignty, a state's highest authority belongs to its citizens. This theory developed in response to absolutism, which was created by the theories of state sovereignty and royal sovereignty.

The foundation of the rule of law is social contract theory. The social contract theory states that rational individuals will agree to a contract to give up their rights in exchange for security provided by a civil society governed by fair and binding rules of law.¹⁵ Therefore, to maintain public order and safety, some of the citizens' rights are taken away, making them vulnerable to

¹¹ Mukti Fajar and Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Empiris & Normatif*, Pustaka Pelajar, pages 280

¹² Serra, F. a. R., Martins, F. S., & Da Cunha, J. a. C. (2018). *Secondary Data in Research – Uses and Opportunities*. <https://www.redalyc.org/journal/3312/331259758001/html/>

¹³ Oniszcuk, J. (2015). The concept of the State of Law. *Studia Z Polityki Publicznej*, 2(2), 57–77. <https://www.redalyc.org/articulo.oa?id=663771557003>

¹⁴ Jimly Asshiddiqie. *Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia*. Jakarta:Ichtiar Baru van Hoeve, 1994

¹⁵ Anita L. Allen, “Social Contract Theory in American Case Law,” *Florida Law Review* 51, no. 1 (1999)

punishment such as prison or fines. The sanctions are binding to those who violate the laws. Acts of murder, assault, and others are among actions that violate the law, and so sanctions are applicable for those actions.

In the case of the murder of a five-year-old girl in Lebak, there are five perpetrators namely Saenah, Rahmi, Emi, Ujang, and Yayan. The Perpetrators, Saenah (33) and Rahmi (38) have known the victim's mother A for quite some time. Saenah and Rahmi are known to be in a same-sex relationship and both use online loans with a total of 75.000.000 using A's identity. The motive is driven by Saenah's jealousy towards A for Rahmi's closeness to her and due to this hatred is formed. Another reason is also that Saenah and Rahmi borrowed A's identity to make online loans for building a business, however, they cannot afford to pay off their debts, because of that A often asks Rahmi and Saenah to pay off their debts which makes them more upset. Moreover, A is known to usually scold Emi's daughter which makes Emi upset. Saenah and Rahmi then persuaded Emi (23) to help take revenge on A with the promised payment of 50.000.000 and with the help of two others, Ujang (22) and Yayan (32) with each getting a payment of 100.000 per person.

The murder case started when Saenah and Rahmi sent a threatening message via WhatsApp to A containing threatening messages to kidnap and murder A. Then Saenah, Emi, Rahmi, Ujang, and Yayan tried targeting A for murder, however, it wasn't accomplished since the plan didn't work out. After failing to target A, they shifted the target to her child instead.

On Tuesday (17/9) Saenah and Emi hid around the A's home, and when the A went out, they directly kidnapped her child. When they tried to kidnap the child, the victim, A's child, started fighting back by trying to bite, finding that the child was fighting back Saenah and Emi restrained and taped her mouth shut. Saenah then began to hit, suffocate, and sit on the child's head. Meanwhile, Emi assisted her with taping, restraining, and sitting on the victim's head.

Finding out that the child had been rendered unconscious, they placed her in a container before moving her into a backpack. Realizing that the child was dead, Saenah and Emi then contacted Rahmi to divert the victim's parents' attention for them to be given time to escape. Saenah brought the backpack containing the victim's body to Kramawatu, Serang, where Ujang and Yayan helped dispose of the victim's body and any evidence related to the murder.

The perpetrators' actions violate the principles of the social contract, which function to prevent violence, ensure mutual respect, and maintain social safety. These violations weaken the agreement between citizens and the state, where individuals give up certain freedoms in exchange for protection within society. By committing these crimes, the perpetrators not only harm their victims, but also disrupt the fundamental structure that keeps society together. This case shows the importance of strong governance and effective legal measures in preventing such acts, maintaining social order, and maintaining the integrity of the social contract. It emphasizes the state's responsibility to enforce laws that protect citizens, hold offenders accountable, and ensure the stability of civil society. Maintaining this social contract is needed to create a stable and harmonious community in which people can live without fear of violence or oppression.

Identify the elements of child abuse fulfilled in the legislation

According to Mr. M.H. Tirtaamidjaja, assault is the intentional act of causing pain or injury to another person. However, an act that causes pain or injury to another person cannot be considered assault if it is carried out for safety.¹⁶

Article 55

“1. Punishable as perpetrators of a criminal act are: those who commit, order to commit, and participate in the act, those who, by offering or promising something, by abusing authority or position, through violence, threats, or deception, or by providing opportunities, means, or information, intentionally incite others to commit the act.

2. For the inciter, only the act that was intentionally incited and its consequences shall be considered.”

(1) The following shall be punished as perpetrators of a criminal act:

1. Those who commit, order to commit, or participate in the commission of an act:
 - Those who committed the act: Saenah, Emi, Rahmi, Ujang, and Yayan committed the act of murder and disposed of the victim's body.
 - Those who ordered the act to be committed: Saenah and Rahmi were the masterminds or instigators behind this case.
 - Those who participated in the act: Emi was provoked by Saenah and Rahmi, while Ujang and Yayan helped Saenah in disposing of the victim's body.
2. Those who, by offering or promising something, by abusing authority or position, by violence, threats, deception, or by providing opportunities, means, or information, intentionally incite others to commit an act:
 - Those who offer or promise something: Saenah, promising Rp 100,000 to Ujang dan Yayan to dispose of the victim's body.
 - By violence: Saenah, Emi, and Rahmi tortured and murdered the victim.
 - By providing opportunities, means, or information: Saenah provided the means to Ujang and Yayan to assist in the murder.
 - Intentionally inciting others to commit an act: Saenah and Rahmi involved Emi, Ujang, and Yayan.

(2) For the instigator, only the acts that were intentionally instigated shall be considered, along with their consequences:

- For the instigator: Saenah and Rahmi.
- Only the acts that were intentionally instigated shall be considered: Saenah and Rahmi encouraged Emi to participate in the act of murder against the victim.
- Along with their consequences: The consequences are torturing and taking another person's life.

- Article 76C of Law No. 35 of 2014

¹⁶ Tirtaamidjaja, Pokok-pokok Hukum Pidana, Jakarta Fasco, 1955, hlm. 174.

"Every person is prohibited from placing, allowing, committing, instructing to commit, or participating in acts of violence against a child."

- (1) "Every person" in this sentence means that every person that fulfills the prohibition written is implicated.
- (2) "Allowing" according to the Cambridge dictionary means to give permission for someone to do something, or to not prevent something from happening.¹⁷ In this case, perpetrator Saenah and Emi not only did not try to stop the assault but also committed and participated in the act. Meanwhile Rahmi who had known about the act, did not try to prevent it from happening.
- (3) "Committing" in the case the perpetrator Saenah and Ami both committed the act by taping, hitting, and suffocating the child.
- (4) "Participating" from the case it is known that Emi joined Saenah in the action of taping, hitting, and suffocating the child.
- (5) "Acts of violence against a child" according to the United Nations Children's Fund (UNICEF) violence against a child takes many forms such as physical, emotional, and sexual.¹⁸ The acts of taping, hitting, and suffocating a child fall under the physical form, therefore Saenah, Emi, and Rahmi who allowed, committed, and participated in the act of violence against a child is implicated with this particular article.

Article 80

(1) Any person who violates the provisions as referred to in Article 76C shall be subject to imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a fine of up to Rp72,000,000.00 (seventy-two million rupiah).

- Any person who violates the provisions as referred to in Article 76C: Saenah, Emi, and Rahmi.

(2) In the event that the child as referred to in paragraph (1) suffers severe injuries, the perpetrator shall be subject to imprisonment for a maximum of 5 (five) years and/or a fine of up to Rp100,000,000.00 (one hundred million rupiah).

- In the event that the child as referred to in paragraph (1) suffers severe injuries: The child of A suffered severe injuries resulting in death.

(3) In the event that the child as referred to in paragraph (2) dies, the perpetrator shall be subject to imprisonment for a maximum of 15 (fifteen) years and/or a fine of up to Rp3,000,000,000.00 (three billion rupiah).

- In the event that the child as referred to in paragraph (2) dies: The child of A died as a result of abuse or torture carried out by the perpetrator

¹⁷ *allowing*. (2024). https://dictionary.cambridge.org/us/dictionary/english/allowing#google_vignette

¹⁸ *Violence against children*. (n.d.). UNICEF.org. <https://www.unicef.org/protection/violence-against-children>

CONCLUSION

The perpetrators' actions violate the social contract principles, weakening the agreement between citizens and the state. This case highlights the importance of strong governance and effective legal measures in preventing such acts, maintaining social order, and ensuring the integrity of the social contract, thereby creating a stable and harmonious community. The actions violate multiple legal provisions, including Article 55 of the Criminal Code and Article 80 of Law No. 35/2014 on Child Protection, which apply heavy penalties for acts of violence against children, including up to 15 years in prison. This case shows the importance of enforcing child protection laws and holding perpetrators accountable.

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