

# Criminal Responsibility of Children Who Commit the Crime of Allowing, Ordering to Do or Participating in Violence Against Children Until Death Based on Indonesian Criminal Law

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## Abstract

A criminal act is an act of a person of his own free will or of another person committed by him and this behavior is an act that is prohibited so that a criminal liability arises from the act itself. Any action against a child which results in physical, psychological, sexual misery or suffering and/or neglect, including threats to commit acts, coercion or deprivation of liberty by way of violation of the law is a criminal act of violence against children. A child who commits a crime permits, commits, orders to commit or participates in committing violence against children to the point of death must still be held responsible because it is impossible for a person to be held accountable and sentenced if he does not commit a crime. To be further investigated how to regulate the crime of children who commit, order to commit or participate in violence against children to death based on Indonesian criminal law and what is the criminal responsibility of children who commit criminal acts to allow, order to commit or participate in violence against children to death. The research method used in this research is normative legal research method. From the results of the research, it was found that the regulation of juvenile offenses allows, orders, or participates in violence against children to death in Article 76C in conjunction with Article 80 Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and the criminal responsibility of children who commit crimes allowing, ordering to commit or participating in violence against children to death by serving a maximum of half of the maximum sentence of imprisonment for adults as stipulated in Article 81 paragraph (2) of Law Number 11 Years 2012 concerning the Juvenile Criminal Justice System. Clarifying the meaning of acts of violence in the Criminal Code, Legislation, Government Regulations, Permenkumham and the Government must establish legislation, government regulations, Permenkumham to be even more assertive in imposing sanctions on perpetrators of violence against children.

**Keywords:** *Violence, Children, Criminal, Accountability.*



## A. INTRODUCTION

Crime is a reality in social life that deserves special attention. This is due not only to the types of crimes that continue to grow from time to time, but crimes have also caused deep anxiety and disrupted security and order in social life (Yanto et al., 2020)(Eleanora & Sari, 2019)(Ilyasa, 2021). One form of crime that develops in society and constitutes a crime is violence. Violence is an arbitrary act committed by someone to hurt another person both physically and psychologically. This violent crime is usually directed at weak people such as women and children (Arsawati et al., 2021)(Disemadi et al., 2020). But over time, in fact, children are not only victims, but

children have also become perpetrators in this crime. When the "child" commits a crime, as a rule of law, Indonesia will follow up on the child's actions through legal channels. If a child is punished, there will be both physical and psychological pressure which will hinder the child's growth and development. Therefore, problems regarding children in conflict with the law must be resolved appropriately in order to protect children's rights so that they are able to become quality Indonesian human resources (Supaat, 2022)(Frensh et al., 2022).

Problems in the field of law are issues that need to be followed up considering the complexity of legal issues including the rampant crime that continues to occur along with the times. It is hoped that the Indonesian government, through agencies or agencies and law enforcement officials, will be able to carry out real and accountable law enforcement efforts in accordance with applicable legal regulations so that a safe and orderly social order can be achieved as much as possible (Novita & Al-Fatih, 2019)(Evinigrum & Jamin, 2019). Human interaction in social interaction has given rise to various violations of the law in the form of crimes or criminal acts. One of them is the crime of violence against children. This crime of violence against children is a very important issue because those who become victims of criminal acts of violence are minors, where minors are still in the care of their parents, children as the nation's shoots and the next generation of the nation's ideals must be considered, protected and guarded from all actions that can harm (Prodjodikoro, 2003)(Kinanti et al., 2022).

Children are the next generation of the nation who must receive protection and prosperity. The state, society, parents or families are obliged and responsible for providing protection for children (Suryaningsi et al., 2021)(Jufri et al., 2019). Every child has inherent dignity and human rights that must be upheld. Legal protection for children can be interpreted as an effort to protect the law against various freedoms and children's human rights and various interests related to children's welfare (Jamaludin, 2016). Thus, children who are not mature mentally and physically, their needs must be met, their opinions must be respected, given the right education for personal and psychological growth and development, so that later these children can grow and develop into children who can be expected as successors to the nation's ideals.

As part of the next generation of the nation's ideals, children have a strategic role in ensuring the existence of the nation and state in the future. In order for them to be able to assume this responsibility one day, they need to get the widest possible opportunity to grow and develop optimally, physically, mentally, socially, and spiritually (Nur & Bakhtiar, 2020)(Wismayati et al., 2019). Children are not objects to be punished but must be given guidance and coaching, so that they can grow and develop as normal, healthy and completely intelligent children. Sometimes children experience difficult situations that make them take actions that violate the law. Even so, a child who violates the law does not deserve to be punished let alone put in jail (Djamil, 2015).

Crimes committed by children always draw criticism from law enforcers who are considered by many to not pay attention to the procedures for dealing with

children who have problems with the law, and there is an impression that they are often treated as adults in minor forms who commit crimes. Besides that, the penal system, which until now sometimes still treats children who are involved as perpetrators of crimes, is like perpetrators of crimes committed by adults. Children are placed in a position as a criminal who deserves to get the same law as adults. Current punishment is more oriented towards individual perpetrators or commonly referred to as individual/personal responsibility (Individual responsibility) where perpetrators are seen as individuals who are able to take full responsibility for the actions they commit. Meanwhile, children are individuals who have not been able to fully realize the actions/deeds they are doing, this is because children are individuals who are immature in thinking (Gultom, 2010)(Kiswanto & Masdurohaturun, 2021).

It is fitting for law enforcement officers to provide appropriate sanctions for perpetrators of violent crimes so that the law is truly enforced and order is created in society. However, other than that, law enforcement officials must also pay attention to other considerations that are more comprehensive in imposing sanctions when the perpetrators of the crime are children. Because sanctions are not only expected to provide a deterrent effect on children as perpetrators of criminal acts so they do not repeat their actions and prevent others from committing these crimes, but also must pay attention to the best interests of the child as the purpose of the establishment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Law 11/2012 or the Juvenile Criminal Justice System Law).

In this case the purpose of the juvenile justice law enforcement system emphasizes the objective of protecting and welfare of children for what is meant by the juvenile justice system (Wiyono, 2016). Based on the provisions contained in Article 1 point 1 of Law 11/2012 it can be seen what the legislators want. The intention of establishing the law is that the entire process of resolving cases of children in conflict with the law from the investigation stage to the mentoring stage after serving a crime must be implemented as a system by following the provisions contained in Law 11/2012. This law prioritizes the settlement of legal conflicts involving children as perpetrators in the recovery and compensation for losses suffered by victims rather than punishing children as perpetrators, but related to the actions of children who commit physical violence against someone to the point of causing death for another person, this needs to be considered, because the crime is no longer a crime, but rather a crime that must be legally accountable as such actions are regulated and punishable under Article 338 of the Criminal Code.

Moving on from the problems above, there were several cases where it was stated that children had been legally and convincingly proven guilty of committing the crime of "allowing, committing, ordering to commit or participating in violence against children to death". Based on the above, the authors are interested in conducting further research in the form of a thesis, with the title Criminal Responsibility of Children Who Allow, Order to Do or Participate in Violence Against Children Until Death Based on Indonesian Criminal Law.

## **B. METHOD**

In this writing the research method that the author uses is normative legal research method (normative juridical research) (Subagyo, 2004). Normative legal research or library law research is legal research conducted by examining literature or secondary data. Normative legal research or literature legal research includes research on legal principles and research on vertical and horizontal synchronization levels. This means that the existing problems are examined based on existing laws and regulations (Soerjono Soekanto, 2001). Normative law research uses normative case studies in the form of legal behavior products, for example reviewing laws. The main subject of the study is law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior (Abdulkadir, 2004). So that normative legal research focuses on positive law inventory, legal principles and doctrine, legal discovery in in concreto cases, legal systematics, level of synchronization, comparative law and legal history. The type of data used in this research is secondary data. Secondary data is data obtained from the results of a literature review or review of various literature or library materials related to research problems or materials (Achmad, 2015).

## **C. RESULT AND DISCUSSION**

### **1. Arrangements for Crime of Children Who Allow, Order to Do or Participate in Violence Against Children Until Death Based on Indonesian Criminal Law**

In the Criminal Code, there is no specific understanding of what is meant by violence, but in Article 89 of the Criminal Code it is stated "To commit violence means to use force or physical strength in an illegal way, for example hitting with the hands or with all kinds of weapons, kicking, kicking, and so on. What is equated with committing violence according to this article is: making people faint or helpless (weak)" (Susilo, 1995). What is meant by "fainting" in Article 89 of the Criminal Code means that he does not remember or is not aware of himself. While "powerless" means not having the strength or energy at all, so that he cannot put up the slightest resistance, but the helpless person can still find out what is happening to him.

Like the discussion above, violence is not regulated in a specific chapter in the Criminal Code, but rather in separate chapters. The qualifications of violence can be classified as follows: 1) Crimes against other people's lives (Articles 338-350 of the Criminal Code); 2) Crime of persecution (Article 351-358 of the Criminal Code); 3) Crimes such as theft, hold-up, robbery (Article 365 of the Criminal Code); 4) Crimes against decency (Article 285 of the Criminal Code); and 5) Crimes that cause death or injury due to negligence (Article 359-367 Criminal Code).

Regarding violence in the context of children in conflict with the law, according to Article 1 number 16 of Law 35/2014 states "Any act against a child that results in physical, psychological, sexual and/or neglect of misery or suffering, including threats to commit acts, coercion or deprivation of liberty unlawfully" (Article 1 number 16 of Law 35/2014). In the case of violence against children, the

perpetrators can be charged under Law 35/2014. People who can commit violence or abuse against children can be punished based on:

Article 76C: (Article 76C Law 35/2014)

Everyone is prohibited from placing, allowing, doing, ordering to do or participating in violence against children.

Article 80: (Article 80 of Law 35/2014)

- (1) Everyone who violates the provisions referred to in Article 76C, shall be punished with imprisonment for a maximum of 3 (three) years 6 (six) months and/or a maximum fine of IDR. 72,000,000.00 (seventy-two million rupiahs).
- (2) In the event that the child referred to in paragraph (1) is seriously injured, then the offender shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of up to IDR. 100,000,000.00 (one hundred million rupiah).
- (3) In the event that the child as referred to in paragraph (2) dies, the offender shall be subject to imprisonment for a maximum of 15 (fifteen) years and/or a maximum fine of IDR. 3,000,000,000.00 (three billion rupiahs).
- (4) The penalty is added to one third of the provisions referred to in paragraph (1), paragraph (2), and paragraph (3) if the perpetrators of the abuse are the parents.

Criminal threats in the persecution article in the Criminal Code and in Law 35/2014 apply to those who are adults. If the perpetrator of the crime is a child, the prison sentence that can be imposed on him is a maximum of half of the maximum prison sentence for adults as stipulated in Article 81 paragraph (2) of Law 11/2012.

Violence that causes loss of life or takes the life of other people is a form of crime against life which is usually carried out by threatening and even those who tend to use sharp weapons against the perpetrators, do things that injure physically, and result in the loss of a person's life. This is often associated with murder where an act is intentionally carried out by someone to result in the loss of someone's life, which usually can take the form of various actions, which can be in the form of stabbing, slashing, hitting, poisoning and so on. An act that can be said to be murder is an act by anyone who deliberately takes the life of another person. Article 358 of the Criminal Code is also contained in Book II Chapter XX concerning Persecution, also providing provisions that, "Those who deliberately "participate" in an attack or fight in which several people are involved, apart from their respective responsibility for what was specifically done by them, are threatened: 1) With a maximum imprisonment of two years and eight months, if as a result of the attack or fight someone is seriously injured; and 2) With a maximum imprisonment of four years, if the result is someone dies" (Article 358 of the Criminal Code).

This violent crime against life is not only for adults but can happen to children. So it is inseparable from the existence of legal protection for children and the many cases of brawls that result in injuries to victims and even death. There are cases of child brawls that often occur in the community which result in a child losing his life, so legally formally the provisions of Article 76 C Law 35/2014. So that



everyone who commits a violent crime that results in the loss of life of an adult or a child can be legally processed. If some of the perpetrators of these crimes are minors, they can be brought to court specifically for children in accordance with applicable laws regarding the juvenile criminal justice system, namely Article 69 paragraph (1) of Law 11/2012.

Law 35/2014 Article 1 point 1 states, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Then the law used in terms of juvenile delinquency in Indonesia is Law 11/2012. Whereas in the Law regarding children in Article 1 point 2 it is stated that children in conflict with the law are children in conflict with the law, children who are criminal acts are children and children who are witnesses to crimes and Article 1 point 3 also explains that children in conflict with the law, hereinafter referred to as children, are children aged 12 (twelve) years, but not yet 18 (eighteen) who are suspected of committing a crime. In the case of crimes committed by children regulated in Article 20 of Law 11/2012 states "that the age of the child before the age of 18 (eighteen) years and is submitted to a court hearing after the child in question has exceeded the age limit of 18 (eighteen) years, but has not yet reached the age of 21 (twenty one) years, the child is still referred to the juvenile court". Furthermore, in Article 21 paragraph (1) of Law 11/2012 it is explained that in the event that a child under the age of 12 (twelve) commits or is suspected of committing a crime, investigators, social counselors and professional social workers make a decision to hand it back to their parents/guardians; or enroll them in education, coaching, and mentoring programs at government agencies or LPKS in agencies that handle social welfare, both at the central and regional levels, no later than 6 (six) months.

Article 32 paragraph (1) of Law 11/2012 regarding child detention may not be carried out in the event that the child obtains guarantees from parents/guardians and/or institutions that the child will not run away, will not destroy or destroy evidence, and/or will not repeat the crime. However, detention of children can only be carried out under the following conditions: 1) The child is 14 (fourteen) years of age or older; and 2) Is suspected of having committed a crime punishable by imprisonment for 7 (seven) years or more.

Article 69 paragraph (1) of Law 11/2012 explains that "Children can only be convicted or subject to action based on the provisions of Law 11/2012" and paragraph (2) explains that "Children who are not yet 14 (fourteen) years old can only be subject to action". Then in Article 70 of Law 11/2012 explains that "The lightness of the act, the personal circumstances of the child, or the circumstances at the time the act was committed or what happened later can be used as a basis for the judge's consideration not to impose a sentence or take action by considering the aspects of justice and humanity." Based on this, related to sanctions that can be given to children can be in the form of:

a. Criminal Sanctions

Article 71 paragraph (1) of Law 11/2012 which consists of principal crimes, namely warning sentences, punishments with conditions such as coaching outside

institutions, community service or supervision, job training, coaching within institutions to prison. For further provisions as follows: a) Penal warning; (Article 72 of Law 11/2012), A commotion is a light crime which does not result in a restriction on the freedom of the child; b) Criminal with conditions; (Article 73 Law 11/2012).

1). Coaching outside the institution; (Article 74 of Law 11/2012)

- (1) Punishment for coaching outside the institution can be in the form of having to: i) Participate in mentoring and counseling programs conducted by supervisory officials; ii) Following therapy in a mental hospital; or iii) Following therapy due to abuse of alcohol, narcotics, psychotropics, and other addictive substances.
- (2) If during coaching a child violates the special conditions referred to in Article 73 paragraph (4), the supervisory official can propose to the supervisory judge to extend the coaching period which does not exceed a maximum of 2 (two) times the coaching period that has not been implemented.

2). Society service; or (Article 76 Law 11/2012)

- (1) Community service punishment is a crime intended to educate children by increasing their awareness of positive social activities.
- (2) If the child does not fulfill all or part of the obligations in carrying out the community service sentence without a valid reason, the supervisory official may propose to the supervisory judge to order the child to repeat all or part of the community service sentence imposed on him.
- (3) Community service punishment for children is imposed for a minimum of 7 (seven) hours and a maximum of 120 (one hundred and twenty) hours.

3). Supervision (Article 77 Law 11/2012)

- (1) Supervision punishment that can be imposed on children as referred to in Article 71 paragraph (1) letter b number 3 is a minimum of 3 (three) months and a maximum of 2 (two) years.
- (2) In the event that a child is subject to supervision punishment as referred to in paragraph (1), the child will be placed under the supervision of the Public Prosecutor and guided by a Community Counselor.

4). Work training; (Article 78 Law 11/2012)

- (1) The punishment for job training as referred to in Article 71 paragraph (1) letter c is carried out in institutions that carry out job training according to the age of the child.
- (2) The punishment for job training as referred to in paragraph (1) is imposed for a minimum of 3 (three) months and a maximum of 1 (one) year.

5). Institutional coaching; (Article 80 of Law 11/2012)

- (1) Criminal coaching in institutions is carried out at job training places or coaching institutions organized, both by the government and the private sector.
- (2) Criminal punishment within the institution is imposed if the child's circumstances and actions do not endanger the community.
- (3) Development within the institution is carried out for a minimum of 3 (three) months and a maximum of 24 (twenty four) months.
- (4) Children who have undergone  $\frac{1}{2}$  (one-half) of the duration of coaching in the institution and not less than 3 (three) months of good behavior are entitled to parole.

6). Prison (Article 81 Law 11/2012)

- (1) Children are sentenced to imprisonment in LPKA if the child's circumstances and actions will endanger society.
- (2) Prison sentences that can be imposed on children are no longer than  $\frac{1}{2}$  (one-half) of the maximum sentence of imprisonment for adults.
- (3) Guidance at LPKA is carried out until the child is 18 (eighteen) years old.
- (4) Children who have undergone  $\frac{1}{2}$  (one half) of the duration of coaching at LPKA and have good behavior are entitled to parole.
- (5) Imprisonment against children is only used as a last resort.
- (6) If the crime committed by a child is a crime punishable by death or life imprisonment, the sentence imposed is imprisonment for a maximum of 10 (ten) years.

b. Action Sanctions

In Article 82 paragraph (1) of Law 11/2012 it is stated that "Actions that can be imposed on children include: a) return to parents/guardians; b) surrender to someone; c) treatment in a mental hospital; d) treatment at LPKS; e) the obligation to attend formal education and/or training held by the government or private bodies; f) revocation of driving license; and/or g) improvement as a result of a crime.

In connection with the imposition of sanctions against children who are still underage, in this case, attention must be paid to the severity of the criminal act committed. Given the restorative function of the goal of handling children, the child's age level, the child's psychological condition, and the child's future are very basic things to be the main consideration. In certain cases, prioritizing sanctions in the form of action is greater than the imposition of criminal sanctions. On the basis of these considerations, it is very important how to formulate the types of sanctions both in the form of crimes and actions that will be imposed on children. Based on the provisions of Article 1 number 3 in conjunction with Article 71 paragraph (2) letters a and b in conjunction with Article 69 paragraph (2) of Law 11/2012 a child in conflict with the law is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime. Children who can be punished are children who are over 14 (fourteen) years old and crimes committed by children



are criminal acts that are punishable by imprisonment for 7 (seven) years so that even though they are already 14 (fourteen) years old, if the crime committed is punishable by imprisonment, then the child cannot be sentenced to a crime, but instead is sentenced to action. Punishment of a child must be appropriate and applied as a measure of the last resort for the shortest period of time. Every child deprived of liberty must be treated humanely, and his human dignity must be respected.

## **2. Criminal Responsibility of Children Who Commit the Crime of Allowing, Ordering to Do or Participating in Violence Against Children Until Death**

A person or perpetrator of a crime will not be held criminally responsible or sentenced if he does not commit a criminal act and the criminal act must be against the law, but even if he commits a criminal act, he cannot always be punished, a person who commits a criminal act will only be punished if he is legally and convincingly proven to have made a mistake. Based on the description above, as for the conditions for whether or not someone can be held (criminal) accountable, there must be an error. Errors can be divided into 3 (three) parts namely:

### **a. Have the ability to be responsible**

In terms of the ability to be responsible, it can be seen from the inner state of the person who committed the criminal act to determine the existence of a mistake, in which the state of the soul of the person who committed the criminal act must be such that it can be said to be normal, healthy. Meanwhile, for a person whose mental condition is unhealthy and normal, these criteria do not apply to him and there is no point in holding him accountable, as emphasized in the provisions of Chapter III Article 44 of the Criminal Code which reads as follows :

- (1) Whoever commits an act for which he cannot be held liable because his soul is deformed or impaired due to illness, shall not be punished.
- (2) If it turns out that the perpetrator cannot be held responsible for the act because his mental development is disabled or disturbed due to illness, the judge can order that person to be put in a mental hospital, for a maximum of one year as a probationary period.
- (3) The provisions in paragraph 2 only apply to the Supreme Court, High Court and District Court.

Inability to take responsibility for being young cannot be based on Article 44 of the Criminal Code. What is stated as not being able to take responsibility is a general reason for abolishing a sentence that can be channeled from special reasons as mentioned in Articles 44, 48, 49, 50 and 51 of the Criminal Code. So those who are unable to take responsibility are not only because of the development of a disabled soul or because of illness, but because they are generally young, exposed to hypnosis and so on (Saleh, 1981).

Roeslan Saleh said that children who commit criminal acts are not guilty because they do not actually understand or realize the meaning of the actions they have committed. Children have special psychological characteristics and

characteristics, namely they do not have perfect mental functions so they do not have mistakes in the form of intentional and negligent, so children who are not old enough are not even criminal (Saleh, 1981).

b. Mistakes (intentional and negligent)

If someone is sentenced, it is not enough for that person to commit an act that is against the law or is against the law. So even though the formulation fulfills the formulation of a delict in the law and is not justified because it does not meet the requirements for a criminal imposition. For this reason, punishment still needs conditions, namely that the person who committed the act has guilt or guilt (subjective guilt). This is where the principle of "no crime without fault" (*geen straf zonder schuld*) or *Nulla Poena Sine Culpa* is enforced.

After knowing the meaning of error, the error itself is divided into two forms, namely:

1). Deliberately (*dolus*)

In the Criminal Code (*Wetboek van Strafrecht*) of 1809 it was stated: "intentionally is the will to do or not to do an act that is prohibited or ordered by law". In the Memory of Van Toelichting (Mvt) of the Minister of Justice when submitting *Wetboek van Strafrecht* of 1881 (which answered the 1915 Indonesian Criminal Code), it was explained: "intentionally" means: "consciously from the will to commit a certain crime". Some scholars formulate *de will* as desire, will, will, and action is the implementation of the will. *De will* (will) can be directed against prohibited actions and prohibited consequences. There are two theories related to the notion of "deliberately", namely the theory of will and the theory of knowledge or imagining (Moeljatno, 1987).

In Article 53 paragraph 1 of the Criminal Code regarding Attempts it says "attempting to commit a crime is punishable if the intention for it has been evident from the start of the implementation and the incomplete implementation was not solely caused by his own will".

As for the division of types of intentional which is traditionally divided into three types, namely, among others: (Moeljatno, 1987)

- a). Deliberately meant (*opzet als oogemark*).
- b). Deliberately with awareness of certainty (*opzet met bewustheid van zekerheid of noodzakelijkheid*).
- c). Deliberately with awareness is very likely to happen (*opzet met waarschijnlijkheidbewustzijn*).

The development of thought in theory has also been followed in judicial practice in Indonesia. In some of his decisions, the judges passed their decisions not purely on purpose as certainty, but also followed other patterns. So in this kind of judicial practice it is very close to the value of justice because the judge makes a decision according to the level of guilt of a defendant.

2). Negligence (*culpa*)

The law does not provide a definition of what is meant by this negligence. But this can be seen in MvT (Memori van Toelichting) saying that negligence (*culpa*) lies

between intentional and coincidence. In Memory of the Government's response (MvA) it says that whoever commits a crime deliberately uses his/her abilities, while whoever commits a crime because of his fault (culpa) uses his abilities which he must use (Hamzah, 1984).

c. There is no excuse for criminal write-off

One way to be held criminally responsible for someone is, whether or not the person has reasons for a criminal offence. The Criminal Code is contained in Chapter I Book III regarding matters that abolish or aggravate the imposition of a sentence. As it is known that the current Criminal Code in general can be divided into two general parts contained in the first part (on general regulations) and a special part which consists of two books as contained in the second book (on crimes) and the third book on violations (which applies specifically to certain criminal acts as formulated in that article).

In the first part of the general book contained in the first book (regarding general arrangements) as a whole discusses the reasons for the abolition of crimes, namely as follows:

a. Forgiveness Reason

Regarding the reasons for forgiveness, this is stated in Article 44, Article 48 to Article 51 of the Criminal Code, because Articles 45 to Article 47 of the Criminal Code have been revoked based on Article 63 of Law Number 3 of 1997 concerning juvenile justice. As for the sound of these articles, namely:

Article 44 of the Criminal Code (perpetrators who are mentally ill/disturbed) reads: (Article 44 of the Criminal Code)

- (1) Whoever commits an act for which he cannot be held liable because his soul is deformed or impaired due to illness, shall not be punished.
- (2) If it turns out that the perpetrator cannot be held responsible for the act because his mental development is disabled or disturbed due to illness, the judge can order that person to be put in a mental hospital, for a maximum of one year as a probationary period.
- (3) The provisions in paragraph 2 only apply to the Supreme Court, High Court and District Court.

In Article 44 of the Criminal Code it has the intention that the perpetrator who is mentally ill or mentally disturbed occurs before the act is committed. Besides that, based on paragraph 3, the authority to convict the perpetrator is a judge (this authority does not belong to the police or the public prosecutor) based on an expert witness in psychology (Psychiatry). Even so, the judge in giving his decision is not related to the information provided by the psychiatrist, the judge can reject or accept the psychiatric statement based on decency or appropriateness.

Article 48 of the Criminal Code (acts committed under forced circumstances) which reads: "Whoever commits an act under the influence of coercive force, is not punished." Article 48 of the Criminal Code does not define what is meant by coercion, but according to Memori van Toeliching what is meant by coercion is a force, an impulse, a coercion that cannot be resisted and cannot be resisted (Shidarta,

2006). Thus, not every coercion can be used as an excuse for abolishing a crime, but only coercion which the perpetrator really cannot resist, so that because of the existence of coercion that he commits a crime, he cannot be held criminally responsible.

Article 49 paragraph 1 of the Criminal Code which reads:

- (1) Not criminalized, whoever commits an act of forced defense for himself or for another person, moral honor or own property or another person, because there was an attack or threat of attack that was very close at that time which was against the law.

In this case, it is the judge who plays a role in determining whether there is a causal relationship between an event that causes the offender's soul to be disturbed so that he commits an exaggerated defense, while the act is actually a crime. So actually, the act is still an unlawful act, but the perpetrator is declared innocent or his guilt is abolished.

b. No Justification

In the second part, there is also a special section contained in the second book (special arrangements) as a whole discussing the reasons for abolishing crimes, namely in:

Article 166 of the Criminal Code which reads: "The provisions in Articles 164 and 165 do not apply to people who by notifying them may pose a danger of criminal prosecution for themselves, for a family member of the same blood or a relative in a straight line or a deviated line of the second or third degree, for their husband or ex-husband, or for other people who, if prosecuted, in connection with their position or search, may be released as witnesses against that person".

So according to Article 166 of the Criminal Code, both articles 164 and article 165 do not apply if the perpetrator commits the crime to avoid criminal prosecution against himself or against relatives in direct and sideline descent to the third degree, or against a husband or wife or against someone in his case he can be exempt from the obligation to give testimony before a court hearing (Wiyono, 2016).

From what has been mentioned above, it can be said that the error consists of several elements namely:

- a. There is the ability to be responsible for the maker (*schuld-fahigkeit or zurechnungsfahigkeit*): it means that the maker's mental state must be normal.
- b. The inner relationship between the maker and his actions is either intentional (*dolus*) or negligent (*culpa*): these are called forms of wrongdoing.
- c. There is no excuse that erases the mistake or there is no excuse for forgiveness.

If the three elements mentioned above are met, the person concerned can be held guilty or have criminal responsibility, so that he can be sentenced. Even though mistakes have been accepted as an element that determines the responsibility of the perpetrators of criminal acts, there is still debate about how to interpret mistakes among experts.

Violent crimes that result in loss of life or deprive the lives of other people are a form of crime against life which is usually committed by threatening and even those who tend to use sharp weapons against the perpetrators, doing things that injure physically, resulting in the loss of a person's life. This is often associated with the term murder which is meant to result in his loss, that is, according to medical science, it can be known several things or conditions of a person who will experience death, namely from before the person is declared dead completely until he becomes a corpse. Meanwhile, if it is associated with murder where an act is intentionally carried out by someone to result in the loss of a person's life which usually can take the form of various kinds of actions, it can be in the form of stabbing, slashing, hitting, poisoning and so on.

Killer means a person or tool that kills and killing means a case of killing, act or thing to kill. An act that can be said to be murder is an act by anyone who deliberately takes the life of another person. As for the threat of violent criminal acts of Murder regulated in Article 338 of the Criminal Code that "Anyone who intentionally takes the lives of other people is threatened with imprisonment for a maximum of 15 years". And premeditated murder Article 340 of the Criminal Code "Anyone who deliberately takes the lives of other people, is threatened with premeditated murder, with capital punishment or with imprisonment for life or for a certain time, a maximum of twenty years". The crime of murder is not only committed by someone only to someone, sometimes it is carried out together even in a public place. Therefore, the Criminal Code also regulates crimes against public order.

This is regulated in Article 170 of the Criminal Code in Book II concerning crimes contained in Chapter V concerning crimes against public order, which mentions criminal threats against acts committed by several people, as seen by the words "With joint force" from using violence against people or goods. The use of violence by several people together is already punishable by a maximum imprisonment of five years and six months. Threats are even more severe if the violence results in injuries (maximum 7 years) even more aggravated if the violence results in serious injuries (maximum 9 years) and is even more aggravated if the violence results in death (maximum 12 years). In Article 358 of the Criminal Code in Book II Chapter XX concerning Persecution, it also provides a provision that those who deliberately "participate" in an attack or fight in which several people are involved, in addition to their individual responsibility for what he specifically did, are threatened:

- a. By a maximum imprisonment of two years and eight months, if as a result of the attack or fight someone is seriously injured;
- b. By imprisonment for a maximum of four years, if the result is someone dies.

This violent crime against life can happen not only to adults but can happen to children. So it is inseparable from the existence of legal protection for children and the many cases of brawls that result in injuries to victims and even death, actions that are included in physical violence against children, perpetrators of physical



violence against children in Article 76C Law 35/2014 which basically, "everyone is prohibited from placing, allowing, committing, ordering to do, or participating in violence against children". Can be punished as stated in the threat of sanctions regulated in Article 80 paragraph (3) "In the event that the child as referred to in paragraph (2) dies, then the perpetrator shall be punished with imprisonment for a maximum of 15 (fifteen) years and/or a fine of up to IDR. 3,000,000,000.00 (three billion rupiah)".

There are cases of child brawls that often occur in the community resulting in a child losing his life, so legally formally the provisions in Article 76 C of Law 35/2014 which basically, everyone is prohibited from placing, allowing, doing, ordering to do, or participating in violence against children can be punishable by a criminal penalty. So that any person who commits a violent crime resulting in the loss of life of an adult or a child can be legally processed and held accountable. If some of the perpetrators of these crimes are minors, they can be brought to court specifically for children as referred to in Article 69 paragraph (1) of Law 11/2012.

#### **D. CONCLUSION**

Regulations on crimes against children who allow, order to commit or participate in violence against children to death under Indonesian criminal law have been specifically regulated in Article 76C Law 35/2014. 72,000,000.00 (seventy two million rupiah); b) In the event that the child referred to in Paragraph (1) is seriously injured, then the offender shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of up to IDR. 100,000,000.00 (one hundred million rupiah); c) In the event that the child as referred to in Paragraph (2) dies, the offender shall be punished with imprisonment for a maximum of 15 (fifteen) years and/or a maximum fine of IDR. 3,000,000,000.00 (three billion rupiah); and d) The penalty is added by one third of the provisions referred to in Paragraph (1), Paragraph (2) and Paragraph (3) if the perpetrators of the abuse are the parents.

Sanctions for perpetrators of violence apply to those who are adults. If the perpetrator of the crime is a child, the prison sentence that can be imposed on him is a maximum of half of the maximum sentence of imprisonment for adults as stipulated in Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The criminal responsibility of a child who commits a crime of allowing, ordering to commit or participating in committing violence against children to death is to serve a maximum imprisonment of half of the maximum sentence of imprisonment for adults as stipulated in Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Because every action or behavior of a person on his own or other people's will is carried out by him and this behavior is an act that is prohibited so that there arises a criminal responsibility by the perpetrator of the action itself, then he must still be responsible because it is impossible for a person to be held accountable and sentenced if he does not commit a criminal act.

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