

LAW ENFORCEMENT AGAINST PERPETRATORS OF CRIMES AGAINST STREET CHILDREN COMMITTED BY THEIR BIOLOGICAL PARENTS

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Article	Abstract
<p>Keywords: Law Enforcement, Biological Parents, Children.</p> <p>DOI: 10.28946/scsls.v2i1.3690</p>	<p>Based on the cases in Palembang City, it can be said that the law enforcement against perpetrators of crimes against street children committed by biological parents. The formulation of the problem in this study is 1) How is law enforcement against perpetrators of crimes against street children committed by biological parents in the Palembang City Police and 2) What are the factors that influence law enforcement against perpetrators of crimes against street children committed by biological parents in the Palembang City Police? The research method used is a type of empirical juridical research. Sources of data used in this study consisted of primary data and secondary data. Based on the results of the study, it shows that law enforcement against the offenders of crimes against street children committed by biological parents in the Palembang City Police Resort, namely by penal measures through imprisonment as in Article 76I Jo Article 88 and Article 76C Jo Article 80 paragraph (1) of Law No. 35 of 2014 concerning amendments to Law no. 23 of 2002, concerning child protection or Article 44 Paragraph (1), Paragraph (4) of the Law of the Republic of Indonesia No. 23 of 2004. Factors that influence law enforcement against perpetrators of crimes against street children committed by biological parents, namely first, the factor of law enforcement officers. Lack of Knowledge of Investigators about Child Protection Law, Second, community factors. In cases of crime on street children who tend to be closed so it is difficult to socialize with the surrounding environment. Third, cultural factors that do not want to interfere in the personal affairs of other people or other people's families or neighbors become a separate problem.</p>

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A. INTRODUCTION

The nation needs a successor, this successor can be realized with the emergence of the nation's children and has rights from the moment the child is born to his parents based on the applicable laws and regulations.¹ The law can protect children as protection that can safeguard all forms of children's freedoms and human rights, both in terms of basic rights and children's liberties, which are very important and related to the success of children.²

In the Constitution of the Republic of Indonesia, Article 28B paragraph (2) clearly regulates the right of every child to live, grow up and grow and develop as well as the right to be protected from discrimination.³ Apart from that, all parties must carry out child protection which is their responsibility, this is emphasized in the provisions of the Child Protection Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 which explains about Child Protection, Article 20 which reads: Every person, whether in the State, Head of Government, Regional Government, Community, Family and Parents or Guardians must have responsibility and all must be responsible for providing protection.⁴

In large and small cities, the phenomenon of street children is definitely emerging.⁵ This emergence is due to the economic and social deficiencies that exist in Indonesia and this affects the scale and complexity of children in Indonesia. Indonesian children are victims of economic exploitation.⁶ Cases that often occur in child exploitation include parents ordering their children to earn a living or doing business by employing children on the streets.⁷ We often encounter this phenomenon on roads, crossings and traffic lights. Street children is what they are called by the general public. It is thought that their number will increase, which is closely related to the economic crisis. Although there are those who report that they have been doing this for a long time.⁸ It is possible to find these children becoming beggars, bus drivers, embezzlers, street vendors, parking attendants.

Parents from middle to lower economic levels are sometimes forced to wean their children due to economic pressure. The government, related parties and law enforcement officials who should be responsible for taking care of street children cannot find a solution to this problem.⁹ As an example of a case in Police Report Number: LPA/601/X/2021/SPKT/Polrestabes Palembang/POLDA Sumsel. The chronology is on Saturday, October 9 2021, approximately 19.30 WIB at Simpang 4 Charitas Red Light Jl. Jendral Sudirman District. Ilir Timur I Palembang City, they are threatened as suspects as referred to in Article 76 I in conjunction with Article 88 and Article 76C in conjunction with Article 80 paragraph (1) of Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002, concerning child protection or Article 44 Para-

¹ Meilan Lestari, "Hak Anak Untuk Mendapatkan Perlindungan Berdasarkan Peraturan Perundang-Undangan," *UIR Law Review* 1, no. 02 (2017): 183-90.

² Waluyadi, *Hukum Perlindungan Anak*, 1st ed. (Bandung: Mandar Maju, 2009).

³ Nia Kania Winayanti, "Makna Pasal 28 Uud 1945 Terhadap Kebebasan Berserikat Dalam Konteks Hubungan Industrial," *Jurnal Konstitusi* 8, no. 6 (2011): 986, <https://doi.org/10.31078/jk865>.

⁴ Maidan Gultom, *Perlindungan Hukum Terhadap Anak Dan Perempuan*, ed. Nurul Falah Atif, 4th ed. (Bandung: PT. Refika Aditama, 2018).

⁵ A Herlina, "Kehidupan Anak Jalanan Di Indonesia: Faktor Penyebab, Tatanan Hidup Dan Kerentanan Berperilaku Menyimpang," *Pusat Pengkajian, Pengolahan Data Dan Informasi (P3DI) Sekretariat* 5, no. 2 (2014): 145-55.

⁶ Dessy Rakhmawati, Nelly Herlina, and Evalina Alissa, "Perlindungan Hukum Terhadap Anak Sebagai Korban Eksploitasi Ekonomi Di Kota Jambi" 6 (2022).

⁷ Mohammad Taufik Makarao, Weny Bukano, and Syaiful Azri, *Hukum Perlindungan Anak Dan Penghapusan Kekerasan Dalam Rumah Tangga* (Jakarta: Rineka Cipta, 2013).

⁸ Aly Aulia, "Fenomena Anak Jalanan Peminta-Minta Dalam Perspektif Hadis," *Jurnal Tarjih* 13, no. 1 (2016): 1-13.

⁹ Andi Muhammad Sofyan, "TANGGUNG JAWAB NEGARA TERHADAP ANAK JALANAN PADA BIDANG PENDIDIKAN," *Al-Maiyyah* 10 (2017).

graph (1), Paragraph (4) of Law of the Republic of Indonesia No. 23 of 2004, concerning the elimination of domestic violence.¹⁰

If we refer to the problems above, a comprehensive approach is needed from all parties such as the family, especially parents, relatives, the community and relevant figures, to prevent and prevent exploitation of children. Victims of child exploitation must receive support, after recovery and during the legal process. Victims who have physical and physical injuries must be treated seriously, so that victims can recover and will not be afraid when they return to society. So, based on that cases, it can be said that the law enforcement against perpetrators of crimes against street children committed by biological parents. Based on the background above, the researcher is interested in raising a research topic. Based on the background above, the researcher is interested in raising a research title "**Law Enforcement Against Perpetrators of Crimes Against Street Children Committed by Biological Parents in the Legal Area of the Palembang City Police Department.**"

B. RESEARCH METHODS

This research is empirical juridical research which use statutory approached. The main data in this research are primary data and secondary data, using literature study data and data from field research (Field Research).

C. ANALYSIS AND DISCUSSION

1. Law Enforcement Against Perpetrators of Crimes Against Street Children Committed by Their Biological Parents in the Legal Area of the Palembang City Police Department

Cases of crime that occur among street children, in this case child exploitation by private individuals in Palembang City, have seen an increase in child exploitation, which can be shown in table 1 below:

Table 1: Data on Child Exploitation Cases in Palembang City

No.	Year	Child Exploitation Cases	Status
1	2020	19	P21
2	2021	22	P21
Total		41	

Source: Palembang Police Documentation, 2022, Police Report Number: LPA/601/X/2021/SPKT/Polrestabes Palembang/POLDA Sumsel

As an example of a case in Police Report Number: LPA/601/X/2021/SPKT/Polrestabes Palembang/POLDA Sumsel. The chronology is the criminal case of anyone who deliberately causes or facilitates and makes it a search or habit of seeking economic gain by exploiting children with the aim of making a profit for themselves or other people and abuse of children or physical violence in the domestic sphere, which was carried out by the suspect with the initials OR which occurred on Saturday 09 October 2021 at approximately 19.30 WIB at Simpang 4 Charitas Red Light Jl. Jendral Sudirman District. Ilir Timur I Palembang City, for which the suspect's actions will be threatened under Article 76I in conjunction with Article 88 and Article 76C in

¹⁰ Palembang Police Documentation, 2022, Police Report Number: LPA/601/X/2021/SPKT/Polrestabes Palembang/POLDA Sumsel.

conjunction with Article 80 paragraph (1) of Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002, concerning child protection or Article 44 Paragraph (1), Paragraph (4) of Law of the Republic of Indonesia No. 23 of 2004, concerning the elimination of domestic violence, you will be punished with imprisonment for 3 (three) years and 6 (six) months and will be subject to a fine of a maximum of around IDR 72,000,000.00 (seventy-two million rupiah).¹¹

Children generally have a weak physical and mental nature, do not know many things, and are often positioned in a place that is less appropriate and needed as an object.¹² Basically, children have a plan, thought patterns or ideas, desires and desires which are often not realized, even according to parents, their actions are far from being for their children because according to them this is creativity. According to research from John Gray in "Children come from Heaven" it describes how children are born kind and innocent. But we are fully responsible for always supporting them wisely so that their abilities and talents are channeled. So children must be truly ready to live life as individuals in society.¹³

To be able to create children's rights and obligations, it can be done by protecting children as an effort to build their development and growth, such as physical, mental and social in children.¹⁴ Society must be fair in order to realize child protection, with efforts in various areas of community life that will provide protection for children. Laws can be related to child protection which can be written or unwritten. The guarantee of protection for children is the law.¹⁵ According to Arif Gosita, the continuity of child protection activities and preventing child exploitation which has a negative impact on child protection is legal certainty.¹⁶ Basically, child protection is divided into 2 (two), namely (a) Judicial protection for children where there is protection in the field of public law and in the legal field; (b) Non-legal protection for children, including protection in the social, health and educational fields.

Child protection on the basis of implementation is as follows: (1) Philosophical basis, namely Pancasila as the basis for activities in various aspects of family, community, government and nation life, as well as the philosophical basis for the implementation of child protection; (2) The moral basis is that the implementation of child protection must be in accordance with the ethics of the profession concerned, in order to prevent wrong behavior in exercising authority, power and strength in the implementation of child protection; (3) Legal Basis; The implementation of child protection must be in accordance with the 1945 Constitution and various other applicable laws and regulations. The use of this judicial basis must be in a collaborative manner, namely the integrated use of laws and principles from various applicable legal fields.¹⁷

¹¹ Ibid.

¹² Satriatama Adhyaksa, "Tinjauan Hukum Terhadap Anak Sebagai Objek Kajian Viktimologi Dalam Kejahatan Prostitusi," *Syiar Hukum : Jurnal Ilmu Hukum* 15, no. 2 (2018): 109–22, <https://doi.org/10.29313/sh.v15i2.1267>.

¹³ Periksa Candra Gautama, *Konvensi Hak Anak* (Jakarta: Lembaga Studi Pers dan Pembangunan, 2000).

¹⁴ R. Fitriani, "Peranan Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak-Hak Anak," *Jurnal Hukum Samudra Keadilan* 11, no. 2 (2016): 250–358.

¹⁵ Tegar Sukma Wahyudi and Toto Kushartono, "PERLINDUNGAN HUKUM TERHADAP HAK ANAK YANG MENJADI KORBAN PERLAKUAN TINDAK KEKERASAN DALAM RUMAH TANGGA DIHUBUNGKAN DENGAN UNDANG-UNDANG NOMOR 35 TAHUN 2014 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK," *Jurnal Dialektika Hukum* 2, no. 1 (June 1, 2020): 57–82, <https://doi.org/10.36859/JDH.V2I1.510>.

¹⁶ Arif Gosita, *Masalah Perlindungan Anak*, 1st ed. (Jakarta: Akademika Pressindo, 1985).

¹⁷ Barda Nawawi Arief, *Masalah Perlindungan Hukum Bagi Anak, Peradilan Anak Di Indonesia* (Bandung: Mandar Maju, 2017).

Article 52 – Article 66 Law Number 39 of 1999 concerning Human Rights which explains legal provisions on child protection. Then, Law 35 of 2014 It also regulates the prohibition on anyone, including family or parents, on the grounds of exploiting children, both economically and/or sexually, namely:

Article 76I Law 35 of 2014: Everyone may not or is prohibited from abandoning, releasing, placing, ordering, or participating in the exploitation for economic or sexual interests of children.

Thus, every parent or person who commits acts of exploitation or employs children to beg in order to seek personal satisfaction. So, there will be witnesses to parents or people who do this, both economically and sexually, as follows:

Article 88 Law 35 of 2014 every person who violates the provisions referred to in Article 76I, will be punished with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of IDR 200,000,000.00 (two hundred million rupiah).

The procedure for separating children from parental exploitation is by giving special attention to children, especially children who are victims of exploitation. Availability from the government requires complete regulations for technical implementation in the field. Indonesia basically has several laws regarding victims in general and child victims in particular. Apart from Law Number 8 of 1981 concerning Criminal Procedure Law, Indonesia has special provisions regarding victim protection in Law Number 13 of 2006 concerning Protection of Witnesses and Victims and its amendments.¹⁸

Law enforcement against perpetrators of crimes against street children by their biological parents is carried out in the jurisdiction of the Palembang City Police Department, namely by penal measures through imprisonment and non-penal measures by repressive, preventive and pre-emptive means. Each of these efforts, whether repressive, preventive or rehabilitative, is based on policies related to the Child Protection Law in Article 23 paragraph (1) which reads: Protection will be guaranteed by every country and its government to be able to safeguard and prosper children by paying attention to the rights and obligations of parents, family and even other people who will be responsible for the law to protect their children.

Pada Wilayah Hukum Kepolisian Resor Kota Besar Palembang jika ada In the jurisdiction of the Palembang City Police Department, if there is a case related to crime against street children by biological parents, the following actions are taken: Efforts to overcome child neglect carried out by the Palembang Police Internal Crime Investigation Unit are carried out in 3 (three) ways, namely: prevention efforts, prosecution, and early. In efforts to overcome crime or what is often called political crime which is generally carried out, crime is divided into 2 (two) methods as follows: non-punitive or preventive or punitive and/or repressive efforts. The use of criminal law solutions (punishment) as a last resort is intended as an effort to overcome social problems including the field of law enforcement policy as a rational effort to achieve community welfare. Meanwhile, according to A.S. Note, preventing violent crime has 3 (three) main parts, namely:

First, Preventive Efforts, which are defined as actions or things from previous efforts carried out to be prevented before a crime occurs. The most important prevention effort in this case is eliminating or preventing opportunities for crimes to occur. The perpetrator is responsible for preventing criminal acts of child neglect or child crimes and what efforts will be made by individuals, society, the state, government and police agencies. So, the efforts that will be made for prevention are positive efforts and the police will try to

¹⁸Saristha Natalia Tuage, "Perlindungan Hukum Terhadap Saksi Dan Korban Oleh Lembaga Perlindungan Saksi Dan Korban (Lpsk)," *El-Iqthisadi : Jurnal Hukum Ekonomi Syariah Fakultas Syariah Dan Hukum* 2, no. 2 (2013): 130.

create a controlled atmosphere both in the economic, environmental and cultural conditions that exist in society as a strength for development and not vice versa for failure. Based on the results of interviews conducted on November 26 2022, it was stated that currently preventive efforts to overcome child neglect or child crime have been carried out or implemented in practice..

Second, Suppression Efforts. Law enforcement efforts occur when a criminal act occurs or criminal acts are committed in the law enforcement system with the passing of a decision. Apart from preventive measures, the Palembang Police Special Discrimination Unit has carried out repressive measures which have resulted in criminal acts. A repressive measure taken must follow the flow or procedure determined by police laws and regulations. Leaders on duty in the field cannot act arbitrarily. If procedural errors and arbitrary actions occur, justice or law must be obtained in accordance with the laws and regulations that have been established or are in force.

Third, Initial Efforts. Preliminary Efforts are the initial actions taken by police personnel to prevent a criminal act from occurring. Efforts in an action taken to prevent the occurrence of child neglect or child crime from an early age are by prioritizing good values or principles, so that these principles will be instilled in a person. If there is an action to commit a crime but there is no intention to do it then no crime will occur, this is the initial factor in the disappearance of the crime.

In research according to the Child Protection Theory, the government's commitment to child protection has existed since the founding of the State of Indonesia, this can be seen in the basic constitution which opened the 1945 Constitution for general welfare and to make the nation's life intelligent, in this case including children..¹⁹ To be able to create a safe environment to protect children, namely by providing children with rights and obligations as well as responsibilities for all parents, this realizes the child's normal growth both physically, mentally and socially. Child protection is an example of the presence of justice in society, so that child protection is sought in various aspects of government and community life. Actions have legal consequences, both in terms of written law and unwritten law. The law is a guarantee for child protection activities.

In line with Law Enforcement Theory, law enforcement is a series of plots that explain the values, ideas and ideals that are the purpose of creating law. The aim of creating law or legal ethics which consists of moral values, which contain justice and truth. These values will be implemented in real terms, the existence of these laws will be recognized whether these values are contained in the enforced law or not..²⁰

Law is often misunderstood as working only in the field of criminal law or only in the field of law enforcement. Law enforcement includes action and prevention. So it can be interpreted as the Dutch term *Rechtshan Having*. In contrast to the meaning of the word Law Enforcement which is currently given a repressive meaning, prevention is given information, influence and instructions which is called compliance with the law which means following and mastering the law, therefore it is more appropriate to use the law. the terms legal maintenance or legal control.

¹⁹ Mei Susanto, "Kedudukan Dan Fungsi Pembukaan Undang-Undang Dasar 1945: Pembelajaran Dari Tren Global," *Jurnal Legislasi Indonesia* 18, no. 2 (2021): 184, <https://doi.org/10.54629/jli.v18i2.739>.

²⁰ Arief, *Masalah Perlindungan Hukum Bagi Anak, Peradilan Anak Di Indonesia*.

2. Factors That Influence InLaw Enforcement against Perpetrators of Crimes Against Street Children Committed by Their Biological Parents in the Legal Area of the Palembang City Police Department

The main problem for those who live on the streets is that they are young people. They should not have to struggle to earn a living, but should retain various knowledge and skills for their future life. Because they are the hope of the nation. Therefore, they must of course be given various abilities, both physical and psychological/spiritual. They should receive an education first and achieve their dreams, without having to struggle to earn a living. Factors that influence law enforcement against perpetrators of criminal acts against street children committed by their biological parents in the jurisdiction of the Palembang Police Hotel, namely:

First, the reasons for law enforcement officials. Settlement of cases through mediation used by investigators in criminal cases against street children is not effective. Out-of-court settlement schemes through punitive mediation as in the context above are limited, with limitations and gradations regulated at the level below the law. However, within the limits of regulations at the legal level, criminal cases cannot in principle be resolved outside of court, although in some cases it is possible to resolve criminal cases outside of court but this is not included in the scope of penal arbitration.²¹

Second, community reasons. In the case of crimes against street children, what is worrying is the reason why society tends to be closed so that it is difficult for them to blend in with the surrounding environment. In fact, neighbors or the local community where neglected victims live are also very important sources of information for the police in uncovering cases of child neglect. The main obstacle to uncovering child neglect is the lack of Human Resources (HR) in the police themselves to take up the case themselves, so in this case it is necessary to gather strength. evidence for several months. But of course the main obstacle is the local community. When the surrounding community cares, child neglect will decrease.

Third, cultural reasons. Regarding crimes against street children, cultural barriers are also a problem in uncovering cases of child neglect that occur in Indonesia. The culture of society which does not want to interfere in the personal affairs of other people or other people's families or neighbors is a problem in itself, because that is how it works. Neighbors aren't always interested in what's going on in their neighborhood.

D. CONCLUSION

Based on the results of the description and discussion of law enforcement against perpetrators of crimes against street children committed by their biological parents in the jurisdiction of the Palembang City Police Department, the following conclusions can be drawn:

1. Law enforcement against perpetrators of crimes against street children committed by biological parents in the jurisdiction of the Palembang City Resort Police, namely by penal measures through imprisonment as in Article 76 I in conjunction with Article 88 and Article 76C in conjunction with Article 80 paragraph (1) of the Law. Law No. 35 of 2014 concerning amendments to Law no. 23 of 2002, concerning child protection or Article 44 Paragraph (1), Paragraph (4) of Law of the Republic of Indonesia No. 23 of 2004, concerning the elimination of domestic violence, is punishable by a maximum imprisonment of three years and six months and/or a maximum fine of IDR

²¹ Interview with Irwan Ardiansyah as an investigator with the Women and Children Protection Unit of the Palembang Police on December 12 2022

72,000,000.00 and non-penal efforts with repressive efforts, preventive efforts and pre-emptive efforts.

2. Factors that influence law enforcement against perpetrators of crimes against street children committed by their biological parents in the Legal Area of the Palembang City Police Department, namely First, factors of law enforcement officers. Investigators' Lack of Knowledge about Child Protection Laws Second, Community factors. In cases of crime, street children tend to be closed, making it difficult for them to socialize with the surrounding environment. Third, The cultural factor of not wanting to interfere in the personal affairs of other people or other people's families or neighbors is a problem in itself, because of that way.

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