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# CRIMINAL JUSTICE OF CHILDREN AS PERPETRATORS OF ABORTUS PROVOCATUS CRIMINALIS DUE TO PROMISCUITY

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**ABSTRACT**

*The child protection system and criminal justice system in Indonesia face significant issues, including a lack of coordination and recognition of unique considerations for juveniles who commit sexual offenses. Children who become victims of sexual crimes that cause pregnancy are often subjected to abortion, which can be abortus provocatus criminalis, which occurs due to illegal actions or not based on medical indications. This research used a qualitative method and a stand-alone qualitative research design to analyze data related to the criminal justice of children as perpetrators of abortus provocatus criminalis due to promiscuity. The Juvenile Criminal Justice System in Indonesia includes criminal investigation and prosecution, juvenile trials, and coaching, guidance, supervision, and assistance during and after committing crimes. Law Number 11 of 2012 mandates diversion at the level of investigation, prosecution, and examination of child cases in the district court, but only for crimes threatened with imprisonment under 7 years and not repetition of crimes.*

## INTRODUCTION

The problem of criminal justice of children as perpetrators of *Abortus Provocatus Criminalis* due to promiscuity is a complex issue that involves the intersection of several factors. One of the main issues is the lack of coordination between the child protection system and the criminal justice system. While the child protection system's mission is to promote the well-being of victimized children through needed services (Bilson & Martin, 2017), the criminal justice system's goal is to ensure current and future protection of the child victims whose cases it processes (Putra & Ahyani, 2022). The criminal justice system receives many reports on child victimization from victims, families, schools, and other institutions, and most cases involving child victims reported to the criminal justice system are different from cases reported to the child protection system.

Another issue is the lack of recognition of the unique considerations regarding juveniles who commit sexual offenses. Victim reports suggest that juvenile perpetrators may be responsible for as many as 4 out of every 10 sexual assaults. Treatment and supervision strategies for juveniles who commit sexual offenses began to account for the developmental differences between juveniles and adults (Lillard et al., 2020; Marshall & Marshall, 2022), but many new legislative and policy initiatives that equated juveniles with adult sex offenders also began to emerge. Moreover, children who become victims of sexual crimes that cause pregnancy are often subjected to abortion (Triwulandari & Tarsono, 2022), which is sometimes chosen as a way to overcome unwanted pregnancy. *Abortus Provocatus Criminalis* is an abortion that occurs due to illegal actions or not based on medical indications (Abdullah, 2021; Firdaus et al., 2021). There are several methods of

abortion provocateur criminals that can be completed by the mother itself or others (Wachidah, 2021), such as due to general violence by doing excessive physical activity, such as running. Overall, the problem of criminal justice of children as perpetrators of *Abortus Provocatus Criminalis* due to promiscuity is a complex issue that requires a comprehensive approach to address. It involves the coordination of the child protection system and the criminal justice system, recognition of the unique considerations regarding juveniles who commit sexual offenses, and the prevention of unwanted pregnancy and illegal abortions.

Children have a high curiosity and like to try new things and cause children to do whatever they hear or see. Children commit deviant acts, one of which can be caused by exposure to pornographic videos and pornoaction which can now be accessed very easily. This encourages children to build relationships between the opposite sex and not infrequently who are entangled in promiscuity. Promiscuity is an act of increasing delinquency and concern. One of the promiscuity is free sex. Where this free sex often results in pregnancy outside marriage (Dewi & Darnoto, 2020).

Artificial/intentional abortion/*Abortus Provocatus Criminalis* is the termination of a pregnancy before the gestational age of 20 weeks or the fetus weighs less than 500 grams as a result of deliberate and conscious actions by the prospective mother or the person carrying out the abortion (in this case the doctor, midwife or midwife). When the practice of Abortus Provocatus Criminalis is carried out without a doctor's permission, it constitutes murder, but when it is carried out in accordance with Article 194 of the Health Law, it is permitted, meaning "legal abortion" for health reasons. The author needs to examine further the process of legal and illegal abortion. Article 194 of the Health Law states that anyone who deliberately carries out an abortion that does not comply with the provisions referred to in Article 75 paragraph (2) will be subject to a maximum imprisonment of 10 (ten) years and a maximum fine of 1 billion.

The factor of lack of attention and direction from parents and the lack of cultivation of religious knowledge, encourages children to shape their character more in the social environment of their choice. The incessant flow of culture also shaped the demand for freedom to be uncontrollable. The typical life pattern of western society is contrary to the typical Eastern pattern of life, but the pattern of Western life is often used as a mecca for self-discovery (Farida, 2009). Accompanied by conflicts of self-control and freedom, children easily fall into promiscuity, in this context it is free sex. Head of the Population and Family Agency (BKKBN) Mr. Hasto Wardoyo said that in Indonesia 50,000 children are married early and 80% (eighty percent) are caused by pregnancies outside marriage (CNN Indonesia, 2023). If pregnancy has already occurred, the child who is not ready for responsibility will choose the abortion path as a solution (CNN Indonesia, 2023). Abortion is a criminal offense, every crime will be accompanied by threats and punishments. However, what if the perpetrator of the abortion is a minor.

This study discusses how abortion is categorized as a criminal offense and how the juvenile justice system for perpetrators of abortion. Researchers raised 2 main issues, namely whether *Abortus Provacatus Criminalis* is categorized as a criminal offense and how the justice system for children who commit *Abortus Provacatus Criminalis* acts. The research might raise public

awareness regarding abortion and laws surrounding it and help people decide their stand on this issue.

## METHOD

The research used qualitative method since it was relevant to understanding the complex issue of criminal justice of children as perpetrators of *Abortus Provocatus Criminalis* due to promiscuity. The design used was stand-alone qualitative research whih relies on qualitative data obtained from observations and documents related to criminal justice of children as perpetrators of *Abortus Provocatus Criminalis* due to promiscuity. The data were then analyzed using the thematic analysis technique.

## RESULT AND DISCUSSION

### Is *Abortus Provacatus Criminalis* a Criminal Act?

Abortion is an act of terminating or aborting a pregnancy intentionally or unintentionally before the time of birth arrives (Wulandari, 2019). In general, abortion is a phenomenon of early birth before the fetus can live alone outside the womb (Hibata & Abas, 2021). Moving on from this definition, abortion contains elements of intentionality, meaning an action done so that the fetus in the womb is born prematurely. Normally birth will arrive at the age of 9 months 10 days and at certain times birth can occur at the age of 7 or 8 months (Hibata & Abas, 2021). Abortion is the termination of pregnancy before entering 20 weeks with a fetal weight of less than 500 grams and a length of less than 25 cm (Gulardi, 2002). Abortion is divided into several types, namely:

1) Spontaneous abortion, is the act of natural abortion without the background of human effort or the will of human hands. Spontaneous abortion involves involuntary or natural abortions. Usually caused by poor health factors, such as being infected with certain diseases. Another natural treatment is women who have a miscarriage at the age of 5 (five) to 16 (sixteen) weeks without a definite cause (Ekotama et al., 2001).
2) *Abortus provacatus*, is the act of abortion intentionally due to human intervention that seeks to stop an unwanted pregnancy. Abortion provacatus is divided into two types, namely:
    a) *Abortus provocatus medicinalis*, is an abortion action based on medical considerations. For example, abortion is done to save the life of the mother or the expectant.
    b) *Abortus Provacatus Criminalis*, is an act of abortion carried out intentionally in violation of applicable law (Ekotama et al., 2001).

In this context, the researchers discuss *Abortus Provacatus Criminalis* due to promiscuity which is an act of deliberate reprimanding without legal medical indication and in the process using certain tools and drugs (Erlita & Waluyadi, 2021). Usually the result of these actions is generally the fetus is no longer alive. However, juridically explained that *Abortus Provacatus Criminalis* is an act of termination of pregnancy without considering the age of the womb and the fetus born in a lifeless or lifeless position (Wulandari, 2019). The efforts made to launch the actions

of *Abortus Provacatus Criminalis* are by taking their own actions by taking actions that can endanger the life of the womb such as taking drugs that are prohibited for pregnant women. Such as herbal decay content, soda and black glutinous tape water (Syafiq, 1999). In addition to one's own actions, *Abortus Provacatus Criminalis* can be carried out with the help of others. Such as, using acupuncture techniques to shed the uterus, massages with certain techniques so that the fetus is released from the woman's womb even with the help of midwives or doctors who open illegal abortion practices. Unfortunately, if fetal organs begin to form, destruction will be carried out with special tools such as abortion pliers (Wijayati, 2017).

The above description explains that the actions of *Abortus Provacatus Criminalis* are actions that are carried out "intentionally." So the *Abortus Provacatus Criminalis* is included in criminal acts. Criminal acts are prohibited and the prohibition is accompanied by a threat or punishment (Gunadi & Efendi, 2014). The elements of criminal acts subjectively include things that are inherent in the mind of the perpetrator, namely: (a) elements of intentionality (b) intention (c) planning (Gunadi & Efendi, 2014). The act of *Abortus Provacatus Criminalis* fulfills these elements. The perpetrator or a woman who is pregnant deliberately terminates her pregnancy with the intention that what she contains can be shed with planning so that her womb is not born alive. Furthermore, the elements of criminal acts objectively include: (a) human acts (b) consequences caused (c) unlawful elements. The act of abortion provacatus is a human act that seeks its own crime against the prospective child in the womb, as a result of this action, the child does not succeed in living so that the action is categorized as an unlawful act.

Juridically, although the fetus has not yet had the status of a human being, the fetus still has its own juridical nature. As the fetus in the womb is one unit with its mother and cannot be equated with the parts of its mother's body, because the fetus has its own livelihood. Women who are pregnant do not have the right to determine the fate of the fetus being conceived because the fetus has its own legal protection. When in a pregnant position, women should not be arbitrary in the period of fetal growth and development (Widowati, 2020).

**How Criminal Sanctions for Children Perpetrators of *Abortus Provacatus Criminalis* Acts**

Criminal sanctions are actions committed by someone because they have committed a crime that meets certain elements because they are criminal in nature and from the consequences cause punishment (Hinduswari et al., 2020). In the criminal justice system, children prioritize protection and rehabilitation, because children as someone who still has limitations both physically and mentally. Children need to be separated from the influence of adult criminals, because children need to be kept away from unfavorable environments and need to get good protection by providing guidance and affection. Child prisoners need to be given instruction and direction to the outside world (Marlina, 2009). So that the criminal justice process against children will experience differences compared to adults. Children who face the law are also said to be perpetrators of criminal acts if proven to violate the law. Because, it is undeniable that children often commit unusual delinquencies and lead to criminal acts (Pijoh, 2022). One of them is promiscuity that causes children to have sexual relations early without the bond of marriage.

Juvenile justice is certainly inseparable from the purpose of punishment, which is to provide order and realize child welfare as an achievement of social welfare. The Juvenile Criminal Justice System is the entire process of solving children's cases facing the law from the investigation stage to the guidance stage after undergoing a crime. In addition, one of the legal experts, Setyo Wahyudi, expressed his opinion that the juvenile criminal justice system is a Juvenile criminal justice law enforcement system consisting of a subsystem of juvenile investigation, a subsystem of juvenile prosecution, a subsystem of examination of juvenile judges, and a subsystem of implementing juvenile criminal law sanctions based on the material criminal law of children and the law of implementing sanctions of juvenile criminal law (Wiyono, 2016). The preparation of laws and regulations for the Juvenile Criminal Justice system is a new thing, because in the previous legislation, namely Law no. 3 of 1997 concerning Juvenile Court, it is considered no longer in accordance with the development and legal needs of the community and has not yet conferencely provided legal protection to children.

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Juvenile justice is certainly inseparable from the purpose of punishment, which is to provide order and realize child welfare as an achievement of social welfare. The Juvenile Criminal Justice System Law has provided an explanation of the implementation of the system based on several principles, namely as follows (Wiyono, 2016):

1) Protection: includes activities that are direct and indirect from actions that harm children physically and/or psychologically.
2) Fairness: that every resolution of a child's case should reflect a sense of justice for the child.
3) Non-discrimination: absence of differential treatment based on ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of children, birth order of children, and physical and/or mental condition.
4) Best interests of the child: all decision-making must always consider the child's survival and development.
5) Respect for children's opinions: respect for children's rights to take an interest and express their opinions in decision making.

6) Child survival and development: the most basic human rights for children protected by the state, government, society, family and parents.
7) Coaching: activities to improve the quality of piety to God Almighty intellectual attitudes and behaviors professional skills training as well as physical and spiritual health of children both inside and outside the criminal justice process
8) Guidance: provision of guidance to improve the quality of piety to God Almighty, intellectual attitudes and behaviors, professional skills training, and physical and spiritual health of correctional clients.

In addition, Article 5 of the Juvenile Criminal Justice System Law contains the obligation to use restorative justice in the juvenile criminal justice system which includes:

1) Criminal investigation and prosecution of children carried out in accordance with the provisions of laws and regulations, unless otherwise provided in this Law;
2) Juvenile trials conducted by courts in the general judicial environment; and
3) Coaching, guidance, supervision, and/or assistance during the process of committing a crime or act and after undergoing a criminal or act.

In the provisions contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, precisely in article 7 paragraph (1), it is stated that at the level of investigation, prosecution and examination of child cases in the district court, diversion must be attempted. Diversion itself is defined as the transfer of juvenile case resolution from the criminal justice process to a process outside juvenile justice. However, the implementation of diversion itself can only be carried out on crimes that are threatened with imprisonment under 7 years and not repetition of crimes.

## CONCLUSION

Based on the search results, it can be concluded that the Juvenile Criminal Justice System in Indonesia includes criminal investigation and prosecution of children in accordance with the provisions of laws and regulations, juvenile trials conducted by courts in the general judicial environment, and coaching, guidance, supervision, and/or assistance during the process of committing a crime or act and after undergoing a criminal or act. The Law Number 11 of 2012 concerning the Juvenile Criminal Justice System mandates that diversion must be attempted at the level of investigation, prosecution, and examination of child cases in the district court. Diversion is defined as the transfer of juvenile case resolution from the criminal justice process to a process outside juvenile justice. However, diversion can only be carried out on crimes that are threatened with imprisonment under 7 years and not repetition of crimes.

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