



PREVENTION OF CRIMINAL ACTS OF SEXUAL VIOLENCE AGAINST CHILDREN

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Abstract

In handling criminal acts of violence against minors, nowadays it still really needs special attention, considering that along with the progress of the times and various forms of sexual violence against minors that involve not only distant people but also in the scope of law enforcement is still very minimal. So far, the handling process is more about punishment for perpetrators of sexual violence, but also forgetting how the impact on victims, in this case children, is psychologically dependent. And also preventive measures that must be applied in social life in the community, many parties must be directly involved, not only the responsibility of the environment, the government, more specifically the role of parents and the family environment that. The method used in this research is a normative juridical approach, namely by conducting research based on legal / reference materials by examining theories and concepts from these legal materials, which relate to the legal principles of legislation. -Invitations related to this writing/research.

Keywords: Sexsual Violence. Criminal Acts. Children

1. Introduction

Perpetrators of criminal acts of sexual harassment against minors are rampant lately, it is also important to intensify the punishment of the perpetrator but also not to abandon the aspect of protecting the interests of the perpetrator as a human being. When viewed from the perspective of perpetrators of crimes against minors, it is an act that cannot be accepted by any circumstances, this of course has the result that all actions of the perpetrator must be blamed and even have to be aggravated as much as possible.

As an “ultimum remedium” or a last resort, will the number of perpetrators of sexual crimes against minors be reduced with a threat so severe?. The existence of a law concerning the protection of children is something that is very congruent with an act of protecting minors, but on the other hand, the development of the perpetrator without looking at the aspects of his condition as a human, psychological or sexual disorder that he suffers, makes the perpetrator motivated to do something. Must also be taken into account. It is normal for the victim to ask the



perpetrator to be punished severely, but on the other hand the function of the law in providing a balance to the perpetrator must also be applied so that the goal as a state of law can run well¹. If you study history, actually this type of crime has existed for a long time, or it can be said as a form of classic crime that will always follow the development of human culture itself, it will always exist and develop all the time even though it may not be too much different from before.

Some time ago, in the jurisdiction of the Sikka Police, the perpetrator of raping a minor with the initials EDJ in Wolorega Village, Paga District, Sikka Regency, East Nusa Tenggara (NTT), has been detained by the Sikka Police. "The perpetrator (JLW). Previously, as many as 13 advocates who were members of the Humanitarian Law Advocacy Team (TAHK) sued the National Police Chief and the Sikka Police Chief for ignoring the alleged rape case that befell a child with the initials EDJ. At the time of the incident, the victim was still in the 6th grade. Currently, he has received high school education. The victim's parents have reported a case of alleged rape by a man with the initials JLW to the local police in 2016².

This sexual violence does not only occur in big cities which are relatively more advanced in culture and awareness or knowledge of the law, but also occurs in rural areas which still hold relatively traditional values and customs. The perpetrators of these crimes feel that children can be one of the targets to channel their sexual desires. This is influenced by the opinion that children are not capable enough to understand that the act is a criminal act or children do not have the courage to refuse the wishes of the perpetrator³.

The number of cases of sexual violence against minors illustrates that these acts are carried out indiscriminately, as was the case in a recent case that was committed by an unscrupulous member of the police stationed at the South Jailolo Police, West Halmahera, North Maluku. Initials Brigadier Nikmal Idwar (previously referred to as Brigadier II), is suspected of raping a 16-year-old teenager at the South Jailolo Police Station, West Halmahera, North Maluku. The incident began when the victim and her friend came to the Sessionoli area on Saturday (13/6/2021) early in the morning. Both are from Bacan, South Halmahera Regency. Since it was getting late, they decided to stay somewhere in the surrounding area. The victim and his friend entered the inn at around 01.00 WIT.

Sexual violence committed against minors will certainly have an impact on the psychological and other developments of the child. Psychological impact on children will give birth to prolonged trauma which can then give birth to unhealthy attitudes, such as inferiority, excessive fear, disturbed mental development, and ultimately mental retardation. This situation may be a bad memory of the child victims of sexual abuse. Seto Mulyadi, a child psychologist, said that children who are victims of sexual violence must receive serious attention from both their

¹ Arliman, L. 2017. *Reformasi Penegakan Hukum Kekerasan Seksual Terhadap Anak Sebagai Bentuk Perlindungan Anak Berkelanjutan*. Kanun Jurnal Ilmu Hukum, 19(2), 19(2), 305-326.

² <https://regional.kompas.com/read/2021/01/14/09283821/kasus-pemerkosaan-anak-di-bawah-umur-semprot-mandek-45-tahun-pelaku-akhirnya?page=all>. Diakses pada tanggal 22 Desember 2021 pukul 20.20 Wita.

³ Marpaung, L. (1996), *Kejahatan Terhadap Kesusilaan Dan Masala Prevensinya*, Jakarta: Sinar Grafika. p. 201



families and the government, not only to recover from traumatic conditions but also so that they do not turn into perpetrators in the future⁴.

Child protection is an absolute thing to be carried out by this republic, because this republic in its constitution has declared a state of law that upholds human rights. Child protection as one of the guarantees of human rights is a tangible manifestation of the development of the regeneration of a country's development. It is very unfortunate when children have been sexually abused in their childhood.

2. Method

The method used in this research is a normative juridical approach, namely by conducting research based on legal/reference materials by examining the theories and concepts of these legal materials, which relate to the legal principles of statutory regulations. Invitations related to this writing/research.

3. Findings And Discussion

a. Prevention of Sexual Violence Against Minors.

Harassment or violence in the sense of the Indonesian Language Dictionary is a matter that is characterized by the severity of the actions of a person that causes injury or death of another person or causes physical damage or property of another person, or there is coercion. From the explanation above, harassment is a more physical form of action that results in injury, disability, illness or suffering to others. One element that needs to be considered is in the form of coercion or unwillingness or the absence of the consent of the other party being injured.

The definition of sexuality resulting from the APNET Conference (Asia Pacific Network for Social Health) in Cebu, Philippines 1996 stated that sexuality is a person's sexual expression that is considered socially acceptable and contains broad and deep personality aspects. Sexuality is a combination of one's feelings and behavior which is not only based on biological sex characteristics, but is also an aspect of human life that cannot be separated from other aspects of life.

According to the World Health Organization (WHO), violence is the use of physical force and power, threats or acts against oneself, an individual or a group of people (society) that result in or are likely to result in bruising or trauma, death, psychological harm, developmental disorders, or deprivation right⁵. The need for parental supervision and early religious education for teenagers, especially for minors, is one of the important factors in preventing and minimizing

⁴ Lubis, E. Z. 2017. Upaya Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual. *JUPIIS: Jurnal Pendidikan Ilmu-Ilmu Sosial*, 9(2), 141-150.

⁵ Debby Priscika Putri, Skripsi : *Perbandingan Karakteristik Kekerasan Yang Terjadi Pada Anak di Sekolah Pada Sekolah Menengan Atas dan Sekolah Menengah Kejuruan di Kota Tegal*. (Semarang : Universitas Diponegoro).



the occurrence of violence and abuse against minors. In today's modern era, as well as technological sophistication, it is easy for teenagers to upload pornographic sites, which can have an impact on the development of the younger generation. In addition to these factors, other factors such as environmental factors, family economy, relationships, and parental supervision are also important⁶.

Various cases of sexual violence often occur against children throughout Indonesia, with very explicit and repeated reporting. On the other side of cases of violence against children, there is also violence felt by children from broken homes⁷. This indeed succeeded in reminding the importance of maintaining the confidentiality of victims from media reports. Moreover, the interests of the victims also include the completion of the handling of cases with professional law enforcement.

Victim justice is fulfilled when the perpetrator is punished and the victim undergoes a non-traumatic process. The main problem of law enforcement in cases of sexual violence has not been fully explained in the existing positive law. Taking lessons from poor regulations and law enforcement practices in other countries should also be explained. The interests of the victim again fail to handle cases of sexual violence optimally. Victims are sacrificed again (revictimization) in handling cases of sexual violence⁸.

Sexual violence against children can occur in the family environment and can also occur in the community. One of the most common sexual violence experienced by children and the most terrible is rape. Rape of a child is forcibly inserting a penis into a child's pubic or anal canal. Sexual violence is all forms of sexual treatment in the form of threats or coercion. Sexual violence is unwanted sexual contact with one of the parties, namely the victim.

Sexual violence against children in fact in society, not only in the form of intercourse, but also in other forms of sexual contact. As Ismantoro Dwi Yuwono quotes M. Irsyad Thamrin and M. Farid in their book, that forms of sexual violence against children consist of:

1. Rape
2. Sodomy
3. Oral Sex a) Cunnilingus (oral sex is performed on women) b) Fellatio (oral sex is performed on men)
4. Sexual Gesture (visual sexual assault, including exhibitionism)
5. Sexual Remark (verbal sexual assault)
6. Sexual Harassment
7. Child Prostitution
8. Clitoral circumcision (clitoral circumcision in girls)⁹

⁶ Muhardi Ilyas, *Kasus Cabul Anak Di Bawah Umur Menonjol*, Posmetro Padang, 18 Mei 2016, P. 6.

⁷ Khoiruddin Nasution, *Kekerasan Seksual dan Perindungan Anak, Al-Risalah*, Nomor 16, Volume 1, 2016., p.21

⁸ Choky Ramadhan, *Reformasi Penegakan Hukum Seksual*, Kompas, 21 Juli 2016, p.7

⁹ Ismantoro Dwi Yuwono, 2015, *Penerapan Hukum Dalam Kasus Kekerasan Seksual Terhadap Anak*, (Yogyakarta : Pustaka Yustisia, p. 7



Based on the Big Indonesian Dictionary, rape is defined as: 1) Forced, violent, 2) brave, strong, mighty. Meanwhile, raping means subduing with violence, overpowering, violating with violence. This action is considered a violation of applicable law. According to the KBBI, it can be concluded that in rape there is a main element attached, namely violent behavior related to sexual relations, which is carried out in violation of applicable law.

Soetandyo Wignjosebroto argues about rape quoted by Abdul Wahid and Muhammad Irfan in their book, that “Rape is an attempt to vent sexual desire by a man against a woman in a way that according to the morals and or the applicable law violates. In this sense, what is called rape, on the one hand, can be seen as an act (that is, the act of a person who is forcibly venting his sexual desire), and on the other hand, it can also be seen as an event (i.e. a violation of norms and thus also social order)”¹⁰.

Meanwhile, according to Arif Gosita, rape was formulated through several forms of behavior as follows:

- a. The rape victim must be a woman, with no age limit (object). While there is also a man who was raped by a woman.
- b. The victim must experience violence or threats of violence. This means that there is no agreement from the victim regarding the intentions and actions of the perpetrator.
- c. Sexual intercourse outside the marriage bond is a goal to be achieved by committing violence or threats of violence against certain women.

If it is associated with sexual violence against children, it can be concluded that child rape is an attempt by adults to children to have sexual intercourse to fulfill their lust by forcibly using violence or threats of violence and violating applicable laws. Both are done by male adults to girls and female adults to boys.

b. Handling of Sexual Violence Against Minors

Law enforcement is practiced in very wild ways because law enforcement officers no longer work in accordance with the conscience of justice, but have a desire to cultivate wealth. Legal articles are traded (even though the case at hand is a child as a victim of a crime), because the law enforcers need extra funds to finance hedonic behavior, want to live in luxury like a big businessman, so want to bring this sustainable legal protection of children?. The essence of truth no longer has any meaning, even because of bribes, mistakes can be transformed into something right or the degree is lowered from serious mistakes to light violations of the law.

Because of such law enforcement practices, the public has assumed that justice is a rare item in this republic, including justice for children, especially children who are victims of sexual violence. Sexual violence against children in Law no. 35 of 2014 concerning Amendments to

¹⁰Abdul Wahid, Muhammad Irfan, 2001, “*Perlindungan Terhadap Korban Kekerasan Seksual (Advokasi atas Hak Asasi Perempuan)*”, (Bandung : Refika Aditama, ,p, 40



Law No. 23 of 2002 concerning Child Protection, is categorized into 2, namely sexual intercourse and obscene acts against children. The following article mentions sexual intercourse and sexual abuse of children:

- a. Article 76D mentions sexual intercourse with children, which reads: "Everyone is prohibited from committing violence or threats of violence to force the child to have intercourse with him or with other people".
- b. Article 76E mentions obscene acts against children, which reads: "Everyone is prohibited from committing violence or threats of violence, coercing, deceiving, committing a series of lies, or persuading children to commit or allow obscene acts to be carried out".

According to the Child Protection Act, the types of sexual violence against children are as follows :

- a. Violence regulated in the Criminal Code. This can be interpreted based on the provisions of Law no. 23 of 2002 concerning Child Protection Article 64 paragraph (3) which reads: "Special protection for children who are victims of criminal acts. The criminal acts referred to by the provisions of this article if they are associated with the provisions of Article 91 of Law no. 23 of 2002 concerning Child Protection which states that "At the time this law comes into effect, all existing laws and regulations relating to child protection are declared to remain valid as long as they do not conflict with this law". The existing laws and regulations relating to child protection are included in the Criminal Code, so the crime in question is of course also a crime of sexual violence against children which is not contrary to Law no. 23 of 2002 concerning Child Protection.
- b. Sexual violence against children in the form of sexual exploitation as regulated in Article 66 of Law no. 23 of 2002 concerning Child Protection.
- c. Sexual violence against children preceded by kidnapping, selling and trafficking of children (for prostitution), as regulated in Article 66 - Law no. 23 of 2002 concerning Child Protection
- d. Sexual violence against children as referred to in Article 76D and Article 76E of Law no. 35 of 2014 as the first amendment to Law no. 23 of 2002 concerning Child Protection concerning Child Protection.

1. Criminal Sanctions for Sexual Violence Against Children

The imposition of punishment for perpetrators of sexual violence against children is nothing but a deterrent effect to the perpetrators, but it also aims to reduce sexual violence against children. The following are criminal sanctions for perpetrators of sexual violence against children based on the Child Protection Act, as follows:

Article 81 paragraph (1)

“Anyone who violates the provisions as referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a



maximum fine of IDR 5,000,000,000.00 (five billion rupiah)”.

Article 81 paragraph (2)

The criminal provisions as referred to in paragraph (1) also apply to any person who intentionally commits a trick, a series of lies, or persuades a child to have intercourse with him or with another person.

Article 81 paragraph (3)

In the event that the criminal act as referred to in paragraph (1) is committed by parents, guardians, people who have family relationships, child caretakers, educators, education staff, officers who handle child protection, or it is committed by more than one person jointly. The same, the penalty is added by 1/3 (one third) of the criminal threat as referred to in paragraph (1).

Article 81 paragraph (4)

In addition to the perpetrators as referred to in paragraph (3), the addition of 1/3 (one third) of the criminal threats is also imposed on the perpetrators who have been convicted of committing a crime as referred to in Article 76D.

2. Victims of Sexual Violence

In society, the law acts as a tool to regulate all human behavior. The law is present in society as a solution to solve various kinds of problems. For example, the issue of sexual violence against children. Law as a tool to fulfill the rights of citizens to get a sense of justice, a sense of security, and also legal assistance. No exception is to provide a sense of justice, a sense of security, legal certainty and also legal assistance for child victims of sexual violence.

The presence of Law no. 23 of 2002 concerning Child Protection and its amendments, namely Law no. 35 of 2014 and Law no. 17 of 2016 is a concrete step for the government in providing protection to children. In the consideration section, Law no. 23 of 2002 stated that the establishment of the State of Indonesia was for the welfare of its people. Departing from this argument, then Law no. 23 of 2002 views that child protection is one of the goals of the founding of the State of Indonesia, namely the welfare of the people.

In the explanation of Law no. 23 of 2002 concerning Child Protection, Children are a mandate and gift from God, the mandate here can be interpreted that children are a message or command from God for the State, parents, and society to protect them from all forms of violence that come from anyone, anywhere, and anytime. Especially from sexual violence committed by adults both within the family and from the community. As stated by Derham, Maher, and Waller in their book "An Introduction to Law" quoted by Sri Widoyati Wiratmo Soekito in his book, that: "*Law is the will of God expresse in His command revealed to man trough His chosen instrument; obiedience to God'swill is the supreme command*".

Children who are victims of sexual violence are entitled to special protection as stated in Article



59, Article 66, and Article 69 of Law No.23 of 2003 concerning Child Protection. The special protection in question is protection that is only given to children who are victims of sexual violence. In an effort to provide protection for children, the following principles must be considered:

- a) non-discrimination;
- b) The best interests of the child;
- c) The right to life, survival and development; and
- d) Respect for the opinion of the child.

Here are some special protection measures that can be given to child victims of sexual violence :

1. Rehabilitation efforts, both within the institution and outside the institution
2. Efforts to protect from identity reporting through mass media and to avoid labeling.
3. Providing safety guarantees for victim witnesses and expert witnesses; whether physical, mental or social; and
4. Providing accessibility to obtain information regarding the development of the case

As stated by Mueller in his book that the existence of a law that regulates rape and punishment for perpetrators of sexual violence is a form of protection against the chastity of girls. *“Recognizing the fact that the criminality of statutory rape seeks to protect the purity of young girls”*¹¹.

The existence of Law no. 17 of 2016 as the second amendment of Law no. 23 of 2002 concerning Child Protection along with its amendments, shows that the law is always changing according to changes and progress of society. As evidence that the Government is serious about enforcing the law against perpetrators of sexual violence against children so that perpetrators feel a deterrent effect for their actions and receive punishment according to their mistakes, and encourage concrete steps for all parties to restore the physical, psychological and social conditions of children as victims of sexual violence.

3. Handling of Sexual Violence

Cases of sexual violence against children cause the most difficulties in their resolution, both at the stage of investigation, prosecution, and at the stage of making a decision. In addition to the difficulties in the limitations above, there are also difficulties in proving such as rape or obscene acts which are generally carried out without the presence of other people¹². Sexual violence committed against minors will certainly have an impact on the psychological and other developments of the child. Psychological impact on children will give birth to prolonged trauma which can then give birth to unhealthy attitudes, such as inferiority, excessive fear, disturbed mental development, and ultimately mental retardation. This situation may be a bad memory of

¹¹ Gerhard O. W Mueller, 1980, *Sexual Conduct And The Law*, (United States of America : Oceana Publications, Inc, p. 54.

¹² Leden Marpaung, 1996, *Kejahatan Terhadap Kesusilaan Dan Masalah Prevensinya*, Jakarta, Sinar Grafika, p. 81



the child victims of sexual abuse. The active role of law enforcement officers in tackling decency crimes is very much needed.

To tackle crime, a rational effort is needed from the community, namely by means of criminal politics. Policies or efforts to overcome crime are essentially an integral part of efforts to protect the community (social defense). Therefore, it can be said that the main purpose of criminal politics is "protection of society to achieve the welfare of society".¹³

The reason that cases of sexual violence are not reported by victims to law enforcement officers for processing in court is due to several factors, including the victim feels ashamed and does not want the disgrace that has befallen her to be known by others, or the victim is afraid because she has been threatened by the perpetrator that she will be killed if he reported the incident to the police. This of course affects the mental/mental development of the victims and also affects the law enforcement process itself to create a sense of justice for victims and the community.

The victim factor plays an important role in being able to overcome or resolve this rape case, this requires the courage of the victim to report the incident that happened to him to the police, because in general the victim experiences threats of being raped again from the perpetrator and this makes the victim afraid and traumatized. It is hoped that from this complaint, the case can be opened and an examination process can be carried out so that the victim will get justice for what happened to him

In the dimension of the criminal justice system, the interests of victims in the process of resolving criminal cases have two aspects, namely:

a. Positive Aspect

KUHAP, through pretrial institutions, provides protection to victims by exercising control if the investigation or prosecution of the case is stopped. The existence of this control is a manifestation of the form of protection for victims so that the case is complete and can be resolved through legal mechanisms. KUHAP also places victims in the process of resolving cases through two quality dimensions, namely:

First, the victim is present in court during the examination of a criminal case as a victim, witness to testify about what he himself saw and experienced (Article 1 number 26 of the Criminal Procedure Code). Second, the victim is present in court during the examination of the case as a "victim witness" who can file a combined claim for compensation in the form of:

The amount of money for the losses and suffering he experienced as a result of the defendant's actions. Therefore, the victim, witness, in his capacity, gave a passive statement. The presence of a "victim witness" in front of the court fulfills legal obligations, provides information regarding events that he has seen, heard and experienced, in his capacity as a victim who

¹³ Barda Nawawi Arief, 2002, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung, Citra Aditya Bakti, p. 1-2



demands compensation, the victim is active in cases of merging compensation

b. Negative Aspect

As explained above, the interests of victims in the process of resolving cases in the criminal justice system have positive aspects. However, the reality has a negative aspect. By still referring to the optics of the Criminal Procedure Code, the victim's protection turned out to be limited, relatively imperfect and inadequate. Concretely, the victim has not received proportional attention¹⁴, or victim protection is more indirect protection

4. CONCLUSION

Sexual violence is a common enemy because it is a very inhumane act, where there are parties who are harmed, namely women, more specifically sexual violence involving minors as victims. The findings, both directly from the data obtained in the field, that victims of sexual violence are more dominant against minors, from these results, then become an important note that, the influence of today's developments, needs to be considered related to the extent to which the handling of criminal acts of sexual violence against minors in the context of criminal law

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¹⁴ J.E. Sahetapi, 1987, *Viktimologi Sebuah Bunga Rampai*, Jakarta, Pustaka Sinar Harapan, p. 39



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