


Legal Implementation of Children as Perpetrators of Sexual Violence

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Abstract

The implementation of the law on children involved in sexual violence criminal offenses is discussed in the verdict of case Number: 5/Pid.Sus-Anak/2024/PN.Smr. This action is classified as a criminal act of sexual violence falling under the category of immoral acts. Cases involving children are increasing, including sexual violence committed by children themselves. Article 81 of the Indonesian Criminal Code provides a general explanation regarding sexual offenses against children, including acts of violence or threats carried out through deception, lies, or persuasion to engage in sexual acts. Based on the facts found, the actions committed by the defendant involved in sexual violence against the victim occurred more than once. This study aims to examine the applicable legal provisions for children involved with the law and the considerations of judges in handling cases of children committing sexual violence. The research method applied is a normative legal approach.

Keywords: Legal Implementation; Children as Perpetrators; Sexual Violence.

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INTRODUCTION

Every process and treatment that the child receives greatly affects his quality. A child experiences psychosexual and emotional development during adolescence, which greatly affects their behavior¹. Deviant behavior in adolescents, such as the prevalence of sexual abuse committed by children, is often influenced by an unsupportive environment and exposure to readings, images, and films that contain pornographic elements. These materials can stimulate individuals who view them, which ultimately increases the risk of sexual deviance and violence against children. Given the developing mental capacity of children, it is important to distinguish moral values to protect them from negative influences.

Legal protection is an important step in guaranteeing human rights so that every individual, including children, can enjoy the rights guaranteed by law². The protection of children aims to ensure that they acquire rights and obligations that are appropriate to their mental, social, and physical development, as well as to prevent their involvement in criminal acts. Family factors also have a crucial role in shaping children's physical, emotional, and educational well-being. Children are considered the next generation who

¹ Gunarsa, Y.S.D. *Psikologi Remaja*. (Jakarta: Gunung Mulia, 2007), p. 13

² Rahardjo, S. (1996). *Ilmu Hukum*. (Badung: Citra Aditya Bakti, 1996), p. 23

not only inherit their parents' property, but also traditional values, customs, and social obligations. Therefore, protection from various parties is very necessary to prevent negative impacts in the future, including protection against physical, psychological, and sexual violence that can hinder their development.

The legal treatment of children involved in sexual offenses must still be concerned about their well-being without immediately revoking custody. This approach aims to protect children's freedoms and human rights, as well as ensure their safety. In order to avoid negative stigma, children are not involved in the judicial process, so they can re-interact with society. However, if the threat of imprisonment is more than seven years, diversion efforts are not required according to the applicable law.

Based on Article 76E of Law Number 35 of 2014 concerning Child Protection, violations of this rule are punishable by up to 15 years in prison and a maximum fine of IDR.5 billion. In addition, in Law Number 23 of 2002 which has been amended by Law Number 35 of 2014, children are defined as individuals who have not reached the age of 18 years, including fetuses in the womb. To ensure that their rights are fulfilled and that there is no discrimination in their treatment, legal protection of children is essential. Children remain entitled to legal protection of growth, honor, and honor, regardless of whether they are in legal proceedings.³

If we look at the number of crimes committed by children, the number continues to increase every year, both in terms of quality and method of implementation. Violations committed by children often cause concern for all parties involved, especially parents. The phenomenon of increasing criminal behavior among children does not seem to be in line with the age of the perpetrator. Many children under the age of 14 are exposed to sexual content on social media, which can trigger deviant behavior. Cases of sexual violence against children are difficult to prove because they often occur without witnesses.

According to Article 285 of the Criminal Code, children's cases are processed through special courts in their interests. Sexual crimes occur due to a lack of supervision and opportunities. However, when children are subjected to criminal law, the experience can have a devastating impact on their psychology, leading to ongoing social stigma. Society also tends to exclude children who have undergone legal proceedings, thus worsening their condition in the future⁴. Law Number 11 of 2012 ensures a fairer juvenile justice system, with a focus on their rehabilitation and protection as the next generation. Children need continuous coaching for their physical, mental, and social development as well as protection from things that can endanger themselves and the country in the future.⁵ Parents, families, and society are responsible for a child's growth. Sexual violence can involve anyone, including minors as perpetrators⁶. The Criminal Code regulates criminal law in relation to these cases, while lack of parental supervision is often a triggering factor. If the child is

³ Abd. Chaidir Marabessy, Amrizal Siagian 2023, "Perlindungan Hukum terhadap Anak Pelaku Kejahatan Seksual" *Aufklarung : Jurnal Pendidikan, Sosial Dan Humaniora* 3, no. 1 (2023). 4

⁴ Suharsil, *Perlindungan Hukum Terhadap Anak dan Perempuan*, (Depok: Rajagrafindo Persada, 2016), p. 94.

⁵ Angger Sigit Pramukti and Fuady Primaharsya, *Sistem Peradilan Pidana Anak*, (Yogyakarta: Medpress Digital, 2014), p. 1.

⁶ Alisya Fahrani, Widodo T. Novianti. "Criminological Study of Immoral Crimes Committed by Children". *Jurnal Recidivism* 8, no. 1 (2019), p. 89

involved in this criminal act, a trial process is required to determine the appropriate punishment.

LITERATURE REVIEW

A. Legal Implementation

According to Muhammad Joni, a legal expert, the implementation of law is the application of legal norms in cases, lawsuits, or decisions, as well as the application of law in concrete situations, that is, the application of law from "law in books to law in action". This means that legal performance is reflected in the conformity between what is regulated in the law and how it is implemented.⁷ Someone says "implementation" when they do something. Punishment is made to be applied. One way to understand the law is through its clear form, which consists of principles that explain what actions must be taken for law enforcement. The application of law is related to human beings and their actions.⁸

B. Definition of Children

Children are considered the owners of rights because humans are social creatures who need to show their identity or complete personality in interacting with society. As stated in Article 28B of the 1945 Constitution, the state guarantees every child's right to survival, growth, and development.⁹ According to Law Number 23 of 2002 concerning Child Protection, a child is defined as a person who is not yet 18 (eighteen) years old, including a child who is still in the womb, according to Article 1 paragraph (1). According to the Criminal Code, Article 45 of the Criminal Code defines a child as someone who is not yet 16 (sixteen) years old. According to Law Number 4 of 1979 concerning Child Welfare, a child is someone who is not yet 21 (twenty-one) years old and has never been married (Article 1 point 2). According to Article 1 Paragraph (3) of Law Number 11 of 2012 concerning the Child Criminal Justice System, a child is a child who has reached the age of 12 (twelve) years but is not yet 18 (eighteen) years old who is suspected of committing a criminal act. Article 1 point 5 of the Human Rights Law Number 39 of 1999 states that "Children are any person under the age of 18 (eighteen) years old and unmarried, including children who are still in the womb if it is in their interests."

C. Definition of Crime

The concept of criminal acts is the basis of criminal law, from the point of view of criminology and law, acts that are considered a crime or evil act according to legal norms are referred to as acts that are generally regulated in criminal law.¹⁰ According to Simons, a criminal offense is "when a person breaks the law intentionally or unintentionally, and that person can be held accountable for his or her actions. So that the criminal law can establish sanctions for these acts. However, Moeljatno argued that criminal acts are actions that are

⁷ Muhammad Joni, *Efektifitas Penerapan Hukum* (Online), http://www.mjoni.com/opini/artikel_hukum/efektifitas_penerapan-hukum.html

⁸ Ishaq, *Dasar-dasar Ilmu Hukum*, (Jakarta : Sinar Grafika, 2008), p. 244.

⁹ <http://pih.kemlu.go.id/files/uuno23tahun2003perlindungananak>.

¹⁰ Sudikno Mertokusumo, *Mengenal Hukum*, (Yogyakarta: Liberty, 1985), p. 10.

prohibited by law, and the perpetrators will face sanctions in accordance with the provisions of the applicable law.

D. Definition of Sexual Violence

Unwanted sexual acts committed by one person against another person are referred to as sexual violence. This sexual approach can be expressed verbally or physically. As a result, sexual harassment can occur in many forms, including rape, intentional physical contact, teasing or jokes with sexual connotations, questions about a person's personal sexual life, hand or facial movements that are sexual in nature, and speech that is sexually suggested. In Indonesia, sexual violence affects people of all ages, from children and adolescents to adults. Many locations, including homes, businesses, public places, and schools, can experience this state. Deviant sexual behavior can also include violent sexual relations that occur outside of a valid marriage and are contrary to Islamic law. Violence is used to show the power of physical domination over the perpetrator or to use his physical force to support evil acts.¹¹ Based on information in 2001 and 2012, it was recorded that around 35 women were victims of sexual violence every day.

METHODS OF THE RESEARCH

The data in this study was collected from various sources, such as books, journals, scientific papers, laws, and relevant internet references. The legal materials used consist of three categories. Primary legal materials include laws and regulations, such as the 1945 Constitution, Law Number 12 of 2022 concerning the Crime of Sexual Violence, the Child Protection Law, the Child Welfare Law, and the Juvenile Justice System Law. Secondary legal materials include books, journals, and academic research that support an understanding of primary law. Tertiary legal materials are in the form of dictionaries and legal encyclopedias that provide additional explanations. The research process begins with collecting legal materials through literature studies, then analyzed descriptively with a legal logic approach, both deductive and inductive. The results of this analysis were then compiled systematically to understand the application of the law to children as perpetrators of sexual violence and the effectiveness of regulations in providing legal protection.

RESULTS AND DISCUSSION

A. Legal Provisions Against Children as Perpetrators of Sexual Violence

Violations of the law related to sexual violence can be influenced by a variety of factors, including the environment that can encourage the perpetrator to commit his or her actions, as well as psychological factors such as trauma or depression due to sexual harassment. In addition, viewing pornography can also trigger sexually violent behavior. Children who are perpetrators of sexual violence are treated differently in the legal system because they are not yet old enough to take full responsibility. When sexual violence committed by children is not specifically regulated, the punishment is usually set based on the provisions of the Criminal Code. In particular, Article 285 of the Criminal Code stipulates that an act can be

¹¹Anggoman, E. "Penegakan Hukum Pidana Bagi Pelaku Kekerasan Seksual Terhadap Perempuan". *Lex Crimen* 8, no. 3 (2019), p.3. <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/25631>

considered a criminal offense if it meets the objective elements mentioned in this article, namely it is committed by violence, threats, or coercion against a woman.¹²

Status of Children in Law

According to Indonesian law, a person under the age of 18 is considered a child. If children are involved in criminal acts, including sexual violence, they are treated differently than adults, with a focus on protection and rehabilitation.

Rehabilitative and Restorative Approaches

The restorative justice approach is used to rehabilitate perpetrators and victims of sexual violence through mediation, counseling, and rehabilitation programs. Victim children can get help in social facilities and juvenile detention that focuses on their reintegration into society.

Child Criminal Liability

Age Limit: Children aged 12 years and above can be criminally liable, with punishment adapted to age and intelligence. Ages 12 to 14: Subject to guidance and education, with possible criminal sanctions. Ages 14 to 18: Can face criminal sanctions equivalent to adults.

Articles in the Criminal Code or Laws Related to Sexual Violence

Children who commit sexual violence can be sanctioned in accordance with articles in the Criminal Code or special laws, such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Children are also protected from sexual exploitation and violence.

Sanctions for Child Perpetrators

Children involved in sexual violence will receive lighter sentences than adults, with a focus on education and rehabilitation. They can join programs to change their behavior and prevent future sexual violence.

Psychological Influences and Environmental Factors

Psychological factors and the environment around the child are often considered in determining legal liability. This includes environmental influences that can influence their behavior and lead to involvement in sexual violence.

B. Judge's Considerations in Deciding Case Number: 5/Pid.Sus-Anak/2024/PN.Smr

The judge's consideration in imposing a verdict is based on several important factors that lead to a final decision regarding the sentence imposed. The judge first evaluates whether the defendant really committed the act charged, whether the act is a criminal offense, and whether the defendant is proven guilty and deserves to be sentenced. This decision also involves examining the facts revealed during the trial, such as the identity of the defendant,

¹² Prema, I Ketut Arya Satya et al. "Pembatasan Usia Pertanggungjawaban Pidana Anak dalam Peraturan Perundang-Undangan." *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 4, no. 2 (2019): 232-240.

the evidence presented, and the judge's subjective beliefs¹³. The judge not only considers the mistakes made by the defendant, but also factors that can mitigate or aggravate the sentence.

Regarding the case of sexual violence against children, the defendant was considered guilty of his actions in violation of Article 76D Jo Article 81 Paragraph (1) of 2016 which amends Law Number 23 of 2002 concerning Child Protection. Based on this, the judge sentenced him to one year and six months of coaching at the Tenggarong Special Children's Development Institute, with an additional two-month work sentence. Some of the considerations used by the judge in making this decision are: a) Juridical Considerations: The judge makes a decision based on the applicable laws and regulations, namely Article 76D Jo Article 81 Paragraph (1) of 2016 related to child protection, as well as related laws that underlie the juridical considerations in this case; b) Facts at the Trial: The legal facts revealed during the trial include evidence, evidence, and evidence of the letter submitted, such as witness statements confirming that intercourse occurred, the results of the visum from the Abdoel Wahab Sjahranie Regional General Hospital which showed medical evidence, as well as evidence such as school uniforms, underwear, and mobile phones. The defendant also admitted his actions and expressed regret; c) Sociological Considerations: The judge considers the social and psychological condition of the defendant and its impact on the victim. The aggravating circumstances include the fact that the act is contrary to moral and religious norms, and causes the victim to become pregnant and traumatized to the point of not being able to continue school. On the other hand, mitigating factors include the defendant's confession and remorse for his actions, his young age, and having never been convicted before. In addition, the community research report (Litmas) also recommended that the defendant receive coaching at the Tenggarong Children's Special Development Institute for his mental recovery.

The Litmas report also shows that coaching at the Special Children's Development Institution can provide opportunities for defendants to improve themselves through various existing programs, such as religious activities, independence training, and other coaching programs. This coaching aims to recover children's mentality and prepare them to interact with society in a positive way. Given that the perpetrator and victim were minors, the judge considered the importance of mental coaching and protection for both, and gave a fair verdict by sentencing the coaching.

Based on the recommendation of the Bapas officer and the request from the public prosecutor and the child's parents/guardians, the judge decided that the criminal development will be carried out at the Special Child Development Institution, with the aim of rehabilitation and providing opportunities for the defendant to improve his attitude and behavior in the future, in accordance with the provisions of Article 71 Paragraph (1) Letter d and Article 80 Paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

CONCLUSION

Regulations relating to children involved in sexual violence emphasize the protection of children's rights. Many things related to children's health are protected through the protection of children's rights. For children involved in juvenile criminal justice, there are several types of legal protection for children. When making a decision, the judge considers

¹³ Setya Wahyudi, *Implementasi Ide Diversi dalam Pembaharuan Sistem Peradilan Pidana Anak di Indonesia*, (Yogyakarta: Genta Publishing, 2011)

many things, including what incriminates the defendant and what mitigates the defendant. Methods that focus more on the psychological and mental recovery of the defendant and the victim are essential. Therefore, the child of the perpetrator must be examined and arrested in a different place from adult custody. The judge must also consider the age of the defendant and the impact of the defendant's actions when deciding to return the child to his parents for fostering. The goal is to give defendants and victims the opportunity to improve themselves and avoid the same offenses in the future.

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