

The Police Law Enforcement against Crime of Child Sexual Violence

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Abstract. *This research aims to: (1) Knowing and analyzing law enforcement against crimes of child sexual violence at the Klaten Police; (2) Knowing and analyzing the obstacles of the Klaten Police in law enforcement against crimes of sexual violence against children. The approach used in this research is empirical juridical. Research specifications using analytical descriptive are strengthened by perspective. Types and sources of data using primary data from interviews, and secondary data sourced from primary legal materials, secondary legal materials and tertiary legal materials. Methods of data collection using field studies and document studies. Methods of data analysis using descriptive qualitative. The results of the study concluded that: First, Law Enforcement of Child Sexual Violence Crimes in the Klaten Police, namely: (a) Laws that regulate law enforcement have legal certainty; (b) Can provide legal protection benefits for child victims of sexual violence (c) Provide justice to victims and perpetrators of child sexual violence. Second, the obstacles faced by the Klaten Police in enforcing the law against crimes of sexual violence against children, namely: (1) legal factors are not an obstacle; (b) Law enforcement factors, especially the National Police, are not an obstacle, it's just that sometimes there are differences of opinion with the Public Prosecutor; (c) Judging from the HR and resources factors, there are constraints, namely the minimum number of investigators who have certification as juvenile investigators, there are no special rooms for examining children, diversion rooms and juvenile detention centers according to the classification of juvenile detention centers, and a lack of IT access skills to be able to profile an offender whose identity is still unclear; (d) Judging from community factors, namely: the victim does not want to be honest, forgets to remember the incident, lack of witnesses, the condition of the child who cannot be questioned, and the lack of knowledge of parents regarding the crime of sexual violence against children; (e) Judging from cultural factors, it is constrained by night entertainment which can drag children into wrong associations, many children have dating and free sex relationships, and children make friends with the wrong (naughty) friends.*

Keywords: *Child; Enforcement; Sexual; Violence.*

1. Introduction

In the jurisdiction of Klaten Regency, recently there have also been cases of sexual violence against children, which have been handled by the Klaten Police, such as: (1) A middle-aged man from Wonosari District was arrested by the Klaten Police Criminal Investigation Unit for allegedly committing sexual violence against a 15-year-old junior high school student which resulted in her becoming pregnant and giving birth;¹(2) A bricklayer alias construction worker with the initials SRW alias Kero (28) was arrested by the police because he was determined to commit sexual violence against minors at a cemetery or village cemetery, in Gunting Village to be precise Wonosari District Klaten;²(3) Ragil Sri Wahyudi (28), a resident of Gunting Village, Wonosari District, Klaten, was arrested for allegedly raping his neighbor's toddler. Not only that, the perpetrator also hit his victim on the head until he fainted;³ and (4) Beni Susanto, 43, a construction worker from Jambeyan, Karanganyar District, Klaten, had the heart to have intercourse with a minor girl up to seven times during the period, Thursday-Tuesday (25-30/11/2021).⁴

Several cases of sexual violence that befell children as reported above show that the victims of sexual violence were generally experienced by girls, and the perpetrators of sexual violence were adult men and some even had wives (with families).

The issue of sexual violence against children is included in the category of crimes against humanity that must be prevented and eliminated. This sexual violence against children is not only an unlawful act, it violates the Convention on the Rights of the Child (CRC), it is also contrary to religious and cultural norms of civilized society.⁵ There is no religion on this earth that allows sexual violence, especially against children. A child in this sense is a child based on Article 1 paragraph (1) of the Act No. 23 of 2002 concerning Child Protection namely "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb".

Children who experience sexual violence must be protected. According to the United Nations Children's Fund (hereinafter referred to as UNICEF), children must receive comprehensive protection from violence, exploitation and other

¹ <https://news.harianjogja.com/read/2023/02/07/500/1125610/girls-smp-di-klaten-jadi-korban-kekerasan-sexual-until-ratusan-kali>, accessed March 2, 2023.

² <https://solo.tribunnews.com/2022/12/31/tukang-batu-cabuli-anak-kecil-di-kuburan-klaten-pukul-korban-til-pingsan-ditinggal-terikat?page=2>, accessed March 2, 2023.

³ <https://www.detik.com/jateng/ Hukum-dan-kriminal/d-6490266/pemerksa-balita-di-klaten-ternyata-sempat-pukul-korban-til-pingsan>

⁴ <https://www.solopos.com/tersangka-pencabulan-di-klaten-ngaku-sakit-hati-jika-anak-sebuhi-1207934>

⁵ Nurman Syarif, 2012. Physical and Sexual Violence (Analysis of Articles 5 A and C No. 23 of the 2004 PKDRT Law From the Perspective of Islamic Law), Al-'Adalah, 10, 2012, pp. 423-434.

problems.⁶ Protection of children is a complex matter and requires interrelated components. These components include: social welfare for children and families, components of integrated social behavior change, and the justice system. This proves that the justice system and law enforcement also play an important role in providing protection to children, especially protection for victims of child sexual violence.

Children as shoots, potentials, and the younger generation to continue the ideals of the nation's struggle have a strategic role, characteristics, and special characteristics so that they must be protected from all forms of inhumane treatment that result in violations of human rights. Every child has the right to survival, growth and development and is entitled to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia.

Efforts to provide protection for children as victims of sexual violence or commercial sexual exploitation have been regulated in several laws and regulations that specifically regulate this matter. Act No. 21 of 2007 concerning Acts of Trafficking in Persons (hereinafter referred to as the TIP Law), Act No. 44 of 2008 (hereinafter referred to as the Law on Pornography) and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter referred to as the Child Protection Act). The law is a special law that regulates separate criminal acts outside the provisions contained in the Criminal Code.

Research objectives for; (1) Mknow and analyze law enforcement against crimes of child sexual violence at the Klaten Police; (2) Knowing and analyzing the obstacles of the Klaten Police in law enforcement against crimes of sexual violence against children.

2. Research Methods

The approach used is empirical juridical. The specification of this research uses descriptive analysis. Sources of data in this study are sourced from primary data, secondary. Primary data comes from interviews with sources or informants, and secondary data comes from primary legal materials, secondary legal materials and tertiary legal materials. Methods of data collection using field studies and literature studies.

The data analysis method used is a qualitative analysis method, namely non-statistical or non-mathematical analysis. The data that has been obtained will be analyzed for its contents using legal principles, legal theories, expert opinions and

⁶ The Significance of Child Protection Systems: Key Findings from a Strategic Mapping Exercise in six provinces of Indonesia', UNICEF Indonesia, https://www.unicef.org/indonesia/Issue_Brief_CP_Systems_Mapping_in_Indonesia.pdf

existing laws and regulations, then compiled in the form of research.

3. Results and Discussion

3.1. Types, Motives and Procedures Handling of Child Sexual Violence Crimes at the Klaten Police Station

Types and motives of child sexual violence cases recently handled by the Klaten Police quite diverse. Based on the interview explained that Types and motives for cases of child sexual violence recently handled by the Klaten Police, namely: Types of sexual violence against children are sexual intercourse with children, and sexual abuse of children. Motives for sexual violence against children: by deception/a series of lies, persuasion, and by violence/threats.

Related to procedures for handling cases of child sexual abuse at the Klaten Police, there are several steps that need to be done. Based on an interview with it was explained that procedures for handling cases of violence against children, namely: (1) Making an investigation and investigation plan; (2) Carry out investigative activities including: (Examination of child victims, witnesses and perpetrators, Application for Visum et Repertum and collection of evidence); (3) Conducting a Case Title to determine whether or not an investigation can be made; (4) Carry out investigative activities; (5) Coordination with BAPAS (PK BAPAS), Social Service Office (PEKSOS) and legal advisors regarding the assistance of child witnesses, child victims and child perpetrators; (6) Coordination of the Public Prosecutor; (7) Carry out investigations and send files to the Attorney General's Office; (8) Carry out the transfer of suspects/perpetrators and evidence to the Public Prosecutor.

3.2. Law Enforcement Against Child Sexual Violence Crimes at the Klaten Police Station

Sudikno Mertokusumo stated that through law enforcement, law becomes a reality. Law enforcement has three elements that must always be considered and become a requirement, namely legal certainty (*rechtssicherheit*), justice (*gerechtigkeits*), and expediency (*zweckmassigkeit*).⁷In relation to this opinion, the law enforcement efforts against the Crime of Child Sexual Violence at the Klaten Police Station can be explained as follows.

1. Aspects of legal certainty

Based on the results of interviews with several sources, it is known that the laws used by investigators in dealing with cases of sexual violence against children, namely: (1) Act No. 8 of 1981 concerning Criminal Procedure Code; (2) Act No. 11 of 2012 concerning the Juvenile Criminal Justice System; (3) Act No. 35 of 2014 concerning amendments to Act No. 23 of 2002 concerning child protection in conjunction with Act No. 17 of 2016 concerning the Stipulation of Government

⁷Sudikno Mertokusumo, Chapters Concerning Legal Findings, PT Cira Aditya Bakti, Bandung, 1993, p. 47.

Regulations in lieu of Act No. 1 of 2016 concerning the second amendment to Act No. 23 of 2002 concerning Child Protection Becomes Law.

This law has legal certainty to take firm action against perpetrators of child abuse, because the provisions in the law have synchronization between one law and another, in substance the law is able to accommodate everything related to violence against children, can be used by law enforcement to commit various types and motives of crimes of sexual violence against children, as well as the threats alleged for perpetrators of crimes of sexual violence against children are quite complete, ranging from minimal threats to maximum threats included in the category of threats of severe punishment.

In connection with the certainty that legislation can be used as a guide for law enforcers (police) to take firm action against the perpetrators, the law has legal certainty. It's like an opinion Sudikno Mertokusumo who said that laws must be implemented and enforced. Everyone hopes that the law can be enacted in the event of a concrete incident. How the law is what must apply, basically it cannot deviate: *fiat justitia et pereat mundus* (even though the world will collapse, the law must be upheld). That is what legal certainty wants. Legal certainty is a justifiable protection against arbitrary actions, which means that someone will get something that is expected in certain circumstances.⁸

Herlien Budiono also added that legal certainty is an inseparable feature of law, especially for written legal norms. Law without certainty value will lose meaning because it cannot be used as a guideline for behavior for everyone. Legal certainty has two aspects, namely the ability to determine the law in concrete matters and legal security. This means that the party seeking justice wants to know what is the law in a certain matter before starting a case and providing protection for the parties in the arbitrariness of the judge.⁹

2. Aspects of legal benefits

Based on the results of interviews with several informants, it is seen from the aspect of legal benefits that it is known that regulations related to child sexual violence can provide legal protection benefits for child victims of sexual violence, because the criminal threat for perpetrators of sexual violence against children is very heavy and in SPPA and UUPA requires that children who are in conflict with the law must obtain their rights including; Protection, Education and Rehabilitation

But on a different side, existence regulations related to child sexual violence cannot necessarily guarantee that they can reduce the occurrence of cases of child sexual violence that occur in society, because according to the investigator there must also be supervision from the victim's parents and there is also supervision of the child's association. Because of what was done during the investigation that the

⁸Sudikno Mertokusumo, 2019. *Legal Theory.*, Cahaya Atma Pustaka, Yogyakarta, p. 145.

⁹A. Madjedi Hasan, *Oil and Gas Contracts Based on the Principles of Justice and Legal Certainty*, Fikahati Aneska, Jakarta, 2009, p. 23.

victim's child became a victim of sexual violence due to wrong association and lack of attention from parents.

In connection with the above, Sudikno Mertokusumo said that the community expects benefits in implementing or enforcing the law. Law is for humans, so the implementation of law or law enforcement must provide benefits or uses for society. Don't let it be precisely because the law is implemented or enforced that there is unrest in society.¹⁰ Bambang Semedi also explained that upholding the law in principle must be able to provide benefits or utility for the community, but besides that the community also expects law enforcement to achieve justice. Nevertheless, we cannot deny that what is considered useful (sociologically) is not necessarily fair, and vice versa, what is perceived as fair (philosophically) is not necessarily useful for society.¹¹

Bearing in mind that during the investigation conducted by the police that the victim's child became a victim of sexual violence due to wrong association and lack of attention from parents, this is it is necessary to realize that the occurrence of a crime, such as a crime of sexual violence, is not solely caused by the perpetrator but also by the victim, such as the attitude, behavior and lifestyle of the potential victim. Not infrequently provide stimulation to the culprit to carry out his evil intentions. Thus, the occurrence of the crime is not the absolute fault of the perpetrator. However, the existence of these facts has received less attention in the rule of law and public views on crime. This is as explained by Gosita (2018) in the perspective of victimology, namely the science that examines the problems of victims, victims of victims, and the consequences of victims in studying crime.

According to Gosita, usually the public only pays attention to the components of the actors, the law, and law enforcement officials. Even if the victim factor is questioned, the study is not carried out in a comprehensive and thorough manner. Questions that often arise in crime studies are usually why someone commits a crime, what causes it, how law enforcement officials act in dealing with crime and so on. However, the role of victim access in crime is often overlooked. A crime generally involves two parties, namely the perpetrator and the victim. Crime is very likely to occur precisely because of the role of the victim, such as the attitude, behavior and lifestyle of the potential victim. Not infrequently provide stimulation to the culprit to carry out his evil intentions. Therefore, the occurrence of the crime is not the absolute fault of the perpetrator. However, the existence of these facts has received less attention in the rule of law and public views on crime.¹²

¹⁰Sudikno Mertokusumo, 2019. *Legal Theory.*, Cahaya Atma Pustaka, Yogyakarta, p. 145.

¹¹Bambang Semedi, *Law Enforcement that Guarantees Legal Certainty*, December Edition of the Customs and Excise Training Center, Jakarta, 2013, p. 4-5.

¹²Dhara Ayu Restuning Tyas and Rodiyah, 2020. *The Handling Of Criminal Act Of Theft With Violence By Children Of The Directorate Of Criminal Investigation Of The Central Java Regional Police*, *Journal of Law and Legal Reform* (2020), 1(2): 273- 278.

3. Aspects of legal justice

Based on the results of interviews with several informants, it is seen from the aspect of legal justice that the laws used to act against perpetrators of sexual violence against children have provided justice to perpetrators and victims, because from the victim's side will get satisfaction when the perpetrator has received a legal verdict, considering the threat of a very severe sentence. Then for child perpetrators diversion can be carried out because child perpetrators prioritize law enforcement that is restorative (recovery), not retributive (retaliation).

In every settlement of a criminal case, the law must be able to provide justice for the parties, namely victims get protection and perpetrators get appropriate sanctions. Therefore, justice is subjective, individualistic, and not generalizing. It is as described by Sudikno Mertokusumo, that the community is very concerned that in implementing or enforcing the law justice is considered. In the implementation and enforcement of the law must be fair. Law is not synonymous with justice. The law is general, binding on everyone, generalizing. Whoever steals must be punished: whoever steals must be punished, without discriminating against who stole. On the other hand, justice is subjective, individualistic and not generalized.¹³

3.3. Constraints by the Klaten Police in law enforcement against criminal acts of sexual violence against children

Soerjono Soekanto explained that one of the main problems in law enforcement is influenced by several factors that can hinder the law enforcement process itself. These factors are as follows: (1) The legal factor itself, which in this case is limited to the law; (2) Law enforcement factors, namely parties who make or form or apply the law; (3) Factors of facilities or facilities that support law enforcement; (4) Community factors, namely environmental factors where the law applies or is applied; (5) Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.¹⁴

Based on this opinion, then to the context of the Klaten Police in law enforcement against criminal acts of sexual violence against children can be explained as follows.

1. Judging from the legal factors themselves

Based on the results of interviews with several informants, judging from the legal factors themselves, there are no obstacles in law enforcement against the crime of child sexual violence, because the existing laws are sufficient to ensnare the perpetrators.

¹³Sudikno Mertokusumo, 2019. *Legal Theory.*, Cahaya Atma Pustaka, Yogyakarta, p. 145.

¹⁴Soerjono Soekanto, *Factors Influencing Law Enforcement.* Jakarta: Rajawali, 2013, p. 5.

2. Judging from the factors of law enforcement

Based on the results of interviews with several informants, in terms of law enforcement factors, in general there are no obstacles to law enforcement against the crime of child sexual violence, because are in accordance with their respective roles and can coordinate well. But in certain cases, kAnother obstacle is the existence of the authority of a prosecutor, namely the principle of Dominus Litis, in which case the investigator once believed that the case being handled was a crime, but the prosecutor could not proceed (tends to give non-specific instructions if action must be taken.

3. Viewed from the factor of facilities or facilities

Based on the results of interviews with several informants, judging from the factor of facilities or facilities, there are efforts to enforce the law at the Klaten PolresHR-related constraints include the lack of investigators who have certification as child investigators, there is no special room for examining children, diversion rooms and juvenile detention centers according to the classification of juvenile detention centers, and the lack of IT access capabilities to be able to profile a perpetrator whose identity is still unclear.

4. Viewed from the community factor

Based on the results of interviews with several informants, judging from community factors, especially children who are victims of sexual violence, efforts to enforce the crime of child sexual violence in the jurisdiction of the Klaten Police are constrained, including: (1)The perpetrator did not admit his actions because in every case of sexual violence because there were no witnesses who saw him directly, it was difficult for investigators to elevate him to the investigation process given the lack of evidence as referred to in Article 184 of the Criminal Procedure Code; (2) Lack of attention from the community itself in supervising children, so that perpetrators can commit sexual violence against victims; (3) The victim does not want to be honest or open and the victim cannot remember what happened; (4) Lack of knowledge of people who are far from the city/district/kelurahan/government administration center because they rarely receive counseling regarding child protection laws; (5) The condition of the child who cannot yet be questioned; (6) The victim or the victim's family (community) cannot wait to undergo the investigation and investigation process,

5. Judging from cultural factors (life association)

Based on the results of interviews with several informants, judging from cultural factors (association), efforts to enforce the crime of child sexual violence in the jurisdiction of the Klaten Police are constrained, among others: (1)There is nightly entertainment that can drag children into the wrong company; (2) Many children

are in dating relationships and have free sex; (3) Children make friends with the wrong (naughty).

4. Conclusion

Viewed from the aspect of legal justice, it is known that the laws used to act against perpetrators of crimes of sexual violence against children have provided justice to perpetrators and victims, because from the victim's side will get satisfaction when the perpetrator has received a legal verdict, considering the threat of a very severe sentence. Then for child perpetrators diversion can be carried out because child perpetrators prioritize law enforcement that is restorative (recovery), not retributive (retaliation).

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