

The Juridical Analysis of Criminal Responsibility Performer on Children

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Abstract.

The purpose of this study was to identify and analyze the factors that influence the occurrence of criminal acts of sexual abuse against children. To find out and analyze the criminal responsibility of perpetrators of sexual abuse against children. The method used by the researcher is empirical juridical approach and the specifications in this study were descriptive. The sources of data in this study were secondary data obtained from literature studies and the processing of the researched data was then analyzed qualitatively, namely the analysis of the data to produce data that was systematically arranged based on the laws and regulations, the opinions of experts and the results of the author's research. Based on the results of the study that Factors Affecting the Occurrence of the Crime of Child Abuse as follows: Environmental Factors, Cultural Factors, Economic Factors and Educational Factors. Criminal Liability of Perpetrators of Obscenity Against Children is prosecute perpetrators with criminal sanctions for perpetrators of sexual abuse of children according to the Criminal Code (KUHP), namely article 289. And with criminal sanctions for perpetrators of sexual abuse of minors according to Act No. 23 of 2002 concerning Child Protection, namely article 82.

Keywords: Analysis; Children; Criminal; Liability; Perpetrators.

1. Introduction

The rule of law upholds human rights which are a gift from God Almighty. Children's rights are part of the human rights contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. Children are the nation's assets, as part of the younger generation, children play a very strategic role as the success of a nation. In the context of Indonesia, children are the successors to the ideals of a nation's struggle. The child is the hope of parents, the hope of the nation and the state who will continue the baton of development and have a strategic role, have special ideals or characteristics that will ensure the continuity of the existence of the nation and state in the future.

The life of the nation and state, security is a determining factor in the life of the nation and state, the implementation of a sovereign and authoritative government, which is the main condition supporting the realization of a just, prosperous, prosperous and civilized civil society system based on Pancasila and the 1945 Constitution of the Republic of Indonesia. 1945 Indonesia. Domestically, the National Police carry out law enforcement efforts through the process of investigating and investigating criminal acts as regulated in Act No. 2 of 2002 concerning the Indonesian National Police.¹

¹Ni Made Srinetri, Umar Ma'ruf, (2020), *Progressivity Of Criminal Handling Fraud And Disease By The Directorate Of The General Criminal Investigation Of Central Java Regional Police (POLDA)*, in *Jurnal Daulat Hukum* Volume 3 (1), Published Master Of Law, Faculty of Law Unissula, p. 229 <http://jurnal.unissula.ac.id/index.php/RH/article/view/8777/4076>

Humans are social creatures (*homo socius*). Since humans were born, humans have interacted with other humans in what we know as society.²In living this life, humans have various interests and needs that are different from one another. In order to fulfill these interests and needs, sometimes there are conflicts or conflicts of interest between one individual and another.

The Criminal Code (KUHP) actually has provisions regarding criminal sanctions against perpetrators of sexual violence, but in reality this crime still occurs in many places and is hidden in people's lives. Not infrequently these cases escape the entanglement of the applicable law, some even stop at the level of examination by the police and prosecutors so that they do not reach the court process. To realize the success of law enforcement in eradicating the prevalence of sexual violence cases, it is very necessary to strengthen the coordination of serious cooperation from the police, prosecutors and judges in court. The verdicts of judges examining sexual violence cases in various courts vary. There were even cases of sexual violence against minors who were only sentenced to play around with a six-month prison sentence. This can be justified because within the maximum and minimum limits (one day to twelve years) the judge is free to get the right sentence).³

The development of law in Indonesia itself is very dynamic and always changes following the development of society, legal developments, especially in the development of criminal (material) and criminal procedural law (formal) outside the territory of the Indonesian Criminal Code (Criminal Law Book) and the Criminal Procedure Code (Criminal Law Book). Indonesian Criminal Procedure Code) which is currently in force. This is because the basic rules of the Criminal Procedure Code (material) of the Criminal Code and the Criminal Procedure Code (formal) from the Criminal Procedure Code which are old legal products that have not been updated or revised, only the revision / review of the articles in the two laws and regulations does not replace / revise the entire Criminal Code or KUHP.⁴

One form of crime that is very detrimental and disturbing to society today is sexual abuse. The crime of molestation against children as it is known is an act that violates social norms, namely decency, religion and decency and Human Rights (HAM). Victims of child abuse, who in fact do not physically have sexual attractiveness such as adolescent and adult women will also affect their health conditions resulting in trauma to their victims both physically and psychologically. Obscenity is an act carried out by someone who is motivated by a sexual desire to do things that can be done. Arousing lust, thereby causing satisfaction in him. The crime of obscenity continues to grow until now. The molestation of a helpless person like a child,

²Teguh Prasetyo,(2013), *Hukum Pidana*, Jakarta : Rajawali Press. p.1

³M. Sholeh, Sri Endah Wahyuningsih, *Analisis Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Kekerasan Seksual Anak Dibawah Umur Di Pengadilan Negeri Demak* Jurnal Hukum Khaira Ummah Vol. 12. No. 2 June 2017

⁴Moch. Isa Nazarudin, Umar Ma'ruf, (2020), *Comparison Of The Implementation Of Pre-Court Process Before And After The Constitutional Court Decision Number: 21 / PUU-XII / 2014 In The Batang*, in *Jurnal Daulat Hukum* Volume 3 (1), Published Master of Law, Faculty of Law Unissula, p. 191, <http://jurnal.unissula.ac.id/index.php/RH/article/viewFile/8684/4070>

The purpose of this study was to identify and analyze the factors that influence the occurrence of criminal acts of sexual abuse against children. To find out and analyze the criminal responsibility of perpetrators of sexual abuse against children.

2. Research Methods

The research approach that the researcher used was empirical juridical law (sociological research). The juridical approach was used to analyze various laws and regulations related to the above problems, while the empirical approach was used to analyze the law by looking at the legal reality in society.⁵ The research was descriptive in nature, namely research that aims to describe the state of things in a certain time. The sources of data in this study were secondary data obtained from literature studies and the processing of the researched data was then analyzed qualitatively, namely the analysis of the data to produce data that was systematically arranged based on the laws and regulations, the opinions of experts and the results of the author's research.

3. Result and Discussion

3.1. Factors Affecting the Occurrence of the Crime of Child Abuse

Elucidation of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), it is clearly stated "Indonesia is a State of Law". If the provisions are interpreted grammatically, then there will be consequences of a rule of law, namely that all forms of decisions, actions of state equipment, all attitudes, behavior and actions including those carried out by citizens, must have a legal basis or in other words all must have a legal legitimacy.⁶

Several theories of criminology reveal the reasons why crime can occur. One of them is the biological theory which assumes that talent is the main cause of crime. This talent is passed down by ancestors so that even evil is considered an inherited behavior. Other theories, such as the sociological school, assume that the factor of crime is the environment. Crime can occur due to bad environmental factors. In this condition, criminals are likened to being exposed to disease germs that are around them. Subsequent developments, crime occurs not only caused by talent but also influenced by the environment. If there are two factors, talent and evil, then evil will occur.

The crime of obscenity is very bad, the impact it will have on its victims both now and in the future. The crime of obscenity is a crime that is not foreign in the midst of society. The crime of obscenity has an impact not only on children who experience or who are victims of criminal acts of obscenity, the impact is of course also felt by close families, it even creates fear for parents who have children because there are many incidents of criminal acts of sexual abuse on children, both in the family environment, in the school community or at the children's playground.

⁵Zainudin Ali,(2009), *Metode Penelitian Hukum*, Jakarta : Sinar Grafika. p. 105

⁶Muhammad Adiel Aristo, Umar Ma'ruf,(2020), *Criminal Law Policy against Actor of Criminal Performance Persecution*. in *Jurnal Daulat Hukum* Journal Volume 3 (1), Published Master Of Law, Faculty of Law Unissula, p.139 <http://jurnal.unissula.ac.id/index.php/RH/article/view/8412/4062>

Protection of criminal acts can be interpreted as protection in order to get legal guarantees for the suffering of being victims of criminal acts of obscenity. Everything that can relieve the victim is what is meant by legal protection. Efforts to relieve the suffering of victims by reducing physical suffering and mental suffering. Therefore, those who are victims of the crime of sexual abuse must receive legal guarantees.⁷

The impact of the crime of sexual abuse on children includes physical and psychological impacts. Physical and psychological impacts are impacts that are directly felt by children who are victims of criminal acts of obscenity, which are as follows:

- The impact of the crime of physical molestation

Victims of criminal acts of sexual abuse against children often cause physical damage from mild to those that fall into the heavy category, when the genitals of an adult male are forced to enter the genitals of a girl (in general) of course it will cause injuries such as tearing of virginity, bleeding, permanent injuries or bruises on the child's body. Physical injuries related to the crime of obscenity are often hidden because the genital organs are of course in a closed section and usually the child as a victim of the crime of sexual abuse hides the physical injury because of shame and chooses to suffer alone.⁸

The impact of the criminal act of physical molestation can be easily seen because it can be captured with the human senses of sight, but to determine whether the physical injury is the impact of the crime of sexual abuse or the result of something else, an analysis by an expert, in this case a doctor or a team of doctors, is needed. Physically, victims experience decreased appetite, difficulty sleeping, headaches, discomfort around the genitals, risk of contracting sexually transmitted diseases, injuries to the body due to violent acts of sexual abuse or unwanted pregnancy.⁹

- Psychological impact of sexual abuse

The impact of the criminal act of sexual abuse on children is psychologically not like adults in general, children who still have limited knowledge about sex of course do not understand what is being or have been experienced and do not even know that they are victims of the crime of obscenity. This psychological impact can be easily known and understood by people who are close to the child, because the child will show an unusual or unusual attitude. Such unusual attitudes include being unmotivated, often gloomy, closed off, afraid of new people to being traumatized by an object or place related to the incidence of the crime of sexual abuse that has been experienced.

The theory of legal culture explains that the law is basically not just a black and white formulation as outlined in various forms of legislation, but the law should be seen as a symptom that can be observed in people's lives through the behavior

⁷ Darin Arif Mu'alifin, Dwianto Jati Sumirat, (2019), "*Perlindungan hukum terhadap anak di bawah umur yang menjadi korban tindak pidana pencabulan*", Jurnal Ilmu Hukum, Volume 8 Number 1,

⁸Mark Yantzi, (2009), *Kekerasan Seksual Dan Pemulihan: Pemulihan Bagi Korban, Pelaku Dan Masyarakat (Sexual Offending and Restoration)*. Jakarta : Gunung Mulia. p. 26.

⁹Ivo Noviana, (2015), *Kekerasan Seksual Terhadap Anak: Dampak Dan Penanganannya*, Pusat Penelitian Dan Pengembangan Kesejahteraan Sosial, Kementrian Sosial Republik Indonesia, p. 19

patterns of its citizens.¹⁰In general, it can be said that legal protection includes activities that are direct and indirect from actions that harm children physically and/or psychologically. As for the legal protection process for child victims of sexual abuse, the principle of justice for children is emphasized. That is, justice in every child case must reflect a sense of justice for the child. In addition, it is also necessary to consider the best interests of the child, namely all decision making must always consider the survival and development of the child.¹¹

Factors Affecting the Occurrence of the Crime of Child Abuse as follows:

- Environmental factor, Namely, environmental factors are one of the factors that can support the occurrence of criminal acts of sexual abuse against minors.
- Cultural Factor, Namely, culture is one of the factors that can influence the occurrence of criminal acts of sexual abuse against minors, which in relation to this problem is a work created and continuously updated by a certain group of people or in other words the development of a characteristic of society in Indonesia an area like the lifestyle of the people..
- Economic Factor, Namely, the economy is a supporter of every human life, economics or finance can be a factor that can affect the occurrence of an abuse of minors.
- Educational Factor, The low level of formal education in a person can have an impact on society and the person concerned is easily influenced by committing a crime without thinking about the consequences of his actions. Because of misunderstanding about the rules and the impact of actions that result in the perpetrator violating the norm.

Based on the factors that can trigger a child to become a victim of the crime of sexual abuse that has been described previously, it can more or less tell what the conditions are like for a child who is a victim of a criminal act of obscenity, both from the role that the child has in line with the situation and conditions that followed have a direct or indirect influence which of course has a negative effect on children.

3.2. Criminal Liability of Perpetrators of Obscenity Against Children

According to Simons, criminal liability, as quoted by Eddy OS Hiariej in his book entitled *Principles of Criminal Law*, says that criminal responsibility is a psychological state of a person, so that the implementation of a criminal provision from the general and personal point of view is considered appropriate. In criminal liability Simons provides the basis for the determination of the psychological state or soul of a person and the relationship between the psychological state and the actions taken.¹² In explaining the meaning of error, Moeljatno briefly defines the ability to be responsible, namely a state in which a person's mind is normal and healthy.¹³ It can be seen that the correlation between people's awareness and the actions they commit (criminal acts) is an important element in determining accountability for the crimes committed.

¹⁰Ishaq, (2008), *Dasar-dasar Ilmu Hukum*, Jakarta : Sinar Grafika.p. 10

¹¹Kismanto, Anis Mashdurohatun, (2017), *Keadilan Hukum Anak Korban Tindak Pidana Kekerasan Seksual Di Kabupaten Kendal*, Jurnal Hukum Khaira Ummah Vol. 12. No. 1 Unissula

¹² Eddy OS Hiariej, (2015), *Prinsip-Prinsip Hukum Pidana*, Yogyakarta : Cahaya Atma Pustaka. p. 156.

¹³ Moeljatno, (2008), *Asas-Asas Hukum Pidana*, Jakarta : Rineka Cipta. p. 178.

Of the various cases of obscenity that occurred in Indonesia with various forms and modus operandi, such as being seduced, threatened, forced, deceived, etc., according to the Indonesian National Commission for Child Protection, the perpetrators of such obscenity were sentenced to prison terms of around three to five years on average.

Obscenity will grow from time to time and requires special handling. That's because, the crime of obscenity causes a lot of unrest in people's lives. Therefore, efforts are always made to reduce the increasingly high level of obscenity, even though in reality it is very difficult to eradicate this crime of obscenity completely because basically criminal acts will always develop along with the times and technological advances.

Crime can be committed by anyone and against anyone regardless of age, gender, and so on. Everyone who commits a crime must be responsible for what he has done without any difference, because everyone is equal before the law to achieve the objectives of the law, namely, justice, expediency, and certainty.

The Criminal Code (KUHP) which is now enforced in Indonesia is a KUHP originating from Dutch colonial law (*Wetboek van Strafrecht*) which in fact is no longer in accordance with the conditions of Indonesian society today. Until now, the official text of the Criminal Code is still in Dutch, according to Sudarto.¹⁴

Besides, the Criminal Code which is a legacy of the Netherlands according to researchers is no longer able to answer legal problems and a sense of justice that arises in society, because it is outdated and not in accordance with reality. Even if there are new laws set by the government, they are special laws, not global in nature. This results in the occurrence of which views are appropriate to use which are *special (lex speciale) and global (lex generale)*.¹⁵

Researchers see not infrequently the principle of *lex specialis derogat legi generali* is not used by law enforcers, meaning that even though the crime has been specifically regulated, law enforcement officers still use the general rules stipulated in the Criminal Code, for example cases of obscenity but law enforcement only uses Article 289 of the Criminal Code should be more Main uses Act No. 35 of 2014 concerning amendments to Act No. 23 of 2002 concerning Child Protection in Article 82.

There are many cases of child abuse, there are many problems regarding how the law enforces justice for the perpetrators of molestation who are punished with punishments that can be said to be unable to make the behavior of the perpetrators change for the better, so this causes victims to feel that they do not get efficient justice by the perpetrators. What crimes have the perpetrators committed against the victims, especially minors? Law is a rule for humans, so the implementation of law or law enforcement must provide benefits or uses for society.¹⁶

Legal protection for child victims of decency crimes can include forms of protection that are abstract (indirect) or concrete (direct). Abstract Protection is

¹⁴ Sudarto, (1983), *Hukum Pidana Dan Perkembangan Masyarakat: Kajian Terhadap Pembaharuan Hukum Pidana*, Bandung : Sinar Baru. p. 57.

¹⁵ Ahmad Hanafi, (2005), *Asas-Asas Hukum Pidana Islam*, Jakarta : Bulan Bintang. p. 193.

¹⁶ Teguh Prasetyo, (2018), *Putusan Hakim Tentang Pencabulan Anak Dibawah Umur Di Pengadilan Negeri Kota Pekalongan (Studi Kasus Di Pengadilan Negeri Kota Pekalongan)*, Jurnal Hukum Khaira Ummah Vol. 13. No. 1, Unissula

basically a form of protection that can only be enjoyed or felt emotionally (psychically), such as a sense of satisfaction. Meanwhile, concrete protection is basically a form of protection that can be enjoyed in real terms, such as gifts in the form of material or non-material nature. Material gifts can be in the form of compensation or restitution, exemption from living expenses or education. The provision of non-material protection can be in the form of liberation from threats, from news that demeans human dignity.¹⁷

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4. Conclusion

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¹⁷Sri Endah Wahyuningsih, (2016), *Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kesusilaan Dalam Hukum Pidana Positif Saat Ini*, *Jurnal Pembaharuan Hukum* Volume III No. 2 Unissula

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