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Law Enforcement against Perpetrators of Sexual Violence Crimes Committed by Children

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Abstract

The large number of cases of sexual violence that occur in the world, especially in Indonesia, is certainly an irony that must be resolved together. The reason is, the increasing number of sexual violence crimes shows that criminal law as a way to prevent and overcome crime is not running as it should. The type of research used in this study is sociological legal research whose data will later be analyzed using qualitative data analysis. Law enforcement efforts against perpetrators of crimes against children should be carried out more through the restorative justice or diversion method by prioritizing the child's future. The implementation of diversion against children as perpetrators of crimes, it is necessary to explain the requirements for implementing diversion in the form of a threat of less than seven years. This is because the imposition of criminal sanctions for criminal acts cannot be separated from the minimum and maximum threats, so that the implementation of diversion which can only be carried out under seven years results in legal uncertainty.

Keywords

Law Enforcement, Diversion, Sexual Violence.

1. Introduction

Sexual violence is one of the crimes that is still rampant in society. The issue of this crime is one of the concerns that the government has not missed. Acts of violence, especially those related to sexuality, are one of the acts that are contrary to morals and even laws and regulations (Paradias & Soponyono, 2022). This discussion, in principle, has been regulated in several regulations such as Law No. 1 of 2023 concerning the Criminal Code, Law No. 12 of 2022 concerning Sexual Violence, Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, and so on. However, even though there have been several such regulations, cases of sexual violence are also increasingly occurring.

One form of sexual violence that occurs is generally caused by close relationships or dating. According to Marz and Valdez, violence in dating is generally carried out in the form of physical, psychological, or sexual violence (Cecep & Humaedi, 2018). Reflecting on this, the occurrence of sexual violence is certainly inseparable from the morality and education of the perpetrators. The causes of sexual violence are actually caused by two factors, namely internal factors and external factors. Internal factors that cause the rampant sexual violence come from the attitudes and behaviors of the perpetrators. In this context, internal factors are caused by psychological, biological, moral, revenge, and even past trauma. Meanwhile, external factors that can influence a person are related to the existence of opportunities, culture, lack of education of the perpetrators, victims of pornography, weak law enforcement (Lewoleba & Fahrozi, 2020).

Data presented by the Ministry of Women's Empowerment and Special Protection for Children states that in 2022 there were 9,588 cases of sexual violence against children. This is certainly a significant increase, considering that in 2021, cases of sexual violence that occurred were only around 4,166 cases. Seeing the data presented like this, of course it is not an exaggeration when many people say that "Indonesia is in a Sexual Violence Emergency". Not only in the context of Indonesia, in general, sexual harassment behavior in the world has also occurred a lot. Even data from the World Health Organization (WHO) in 2018 stated that the prevalence of sexual violence against women is still very high, considering that the average number of women who experience sexual violence is 35.6%. That means, 1 in 3 women have experienced sexual violence (Dahlia et al., 2022).

The many cases of sexual violence that occur in the world, especially in Indonesia, are certainly an irony that must be resolved together. The reason is, the increasing number of sexual violence crimes shows that criminal law as a way to prevent and overcome crime is not running as it should (Saraswati, 2015). Starting from this reality, serious efforts need to be made that are useful for preventing the rate of sexual violence crimes. In line with that, the principle that has basically been used by the Indonesian people to prevent sexual violence crimes is by fortifying norms of decency and morality. Even in the context of religion, Islam strictly prohibits adultery or even rape. This is clearly illustrated in Qs. Al-Isra ': 32 which states:

وَلَا تَقْرَبُوا الزُّنَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Meaning: And do not come near to adultery; it is indeed an abomination and an evil way.

Based on the existence of this verse, Islam strictly forbids adultery. Even in the context of adultery, it is also divided into muhsan and ghairu muhsan, which have different legal implications (Harahap, 2018). Yahya bin Yahya at- Tamimi conveyed to us from Husaim who reported from Manshur, from al- Hasan, from Hithan bin Abdullah ar-Raqasyi, from Ubadah bin Shamit that the Messenger of Allah said,

"Take from me (about the law of adultery), take from me (about the law of adultery), take from me (about the law of adultery). Indeed, Allah has determined the punishment for women (who commit adultery). If a man who has never been married (a virgin) commits adultery with a woman who has never been married (a virgin) the punishment is a hundred lashes and exile for one year, while a man and a woman who have been married commit adultery then the punishment is a hundred lashes and stoning.

In various cases, sexual violence crimes are not only committed by adult perpetrators. However, it is not uncommon for these crimes to also be committed by perpetrators who are still children. Referring to Article 1 paragraph (1) of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, it is stated that a child is someone who is not yet 18 years old, including children who are still in the womb (Prabasini, 2021). The application of sexual violence crimes committed by children is certainly handled differently from adult perpetrators. This is because to protect the child's future, certain treatments are needed so that the child can return to normal, so that he does not commit such crimes again. On the other hand, children also have the right to have their future protected, so that these special treatments can be a bridge for children to become much better people again (Soares & Setyawan, 2023).

In line with this, Annisa (2016) also said that in juvenile justice there are activities of examining and deciding cases that are aimed at the interests of children, so that all activities carried out by the police, prosecutors, judges and other officials must be based on the welfare and interests of children (Johar & Haq, 2021). Therefore, handling of criminal acts committed by children must be carried out through diversion. This refers to Article 7 paragraph (1) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Based on this, diversion is the transfer of the settlement of children from the criminal justice process to outside the criminal justice system (Fahriansyah & Hermansyah, 2019).

In relation to this, there was a case in Purworejo, where the chronology of what happened began when AC, AN, and AD gathered at Pentolan near the school after school. When the three children gathered, then DC who was a friend of AC, AN and AD invited his female friend named PN to the Pentolan. It turned out that when they arrived at Pentolan near the school, AC, AN, and AD were drinking alcohol. Long story short, after leaving Pentolan, the four women and PN were taken to AN's house and then PN was forced by AD to enter AN's room. In AN's room, AD forced PN to take off all her clothes, but PN refused. then AD forced and while screaming PN asked for help but there was no help from outside. At that time, PN was raped and for forty minutes AD committed such immoral acts. Starting from such cases, it is necessary to conduct a study on law enforcement against perpetrators of sexual violence by children and how legal protection is for victims of sexual violence against children.

2. Research methods

This study uses a sociological legal approach method, namely an approach that examines law not only from a normative aspect but also in its application in society. The research specification used is analytical descriptive, which aims to provide a comprehensive picture of a legal phenomenon and analyze it in depth. The data used in this study consists of primary data, which is obtained directly from primary sources such as interviews and observations, as well as secondary data, which comes from legal documents, literature, and previous research. The data collected is analyzed using qualitative data analysis, namely the process of systematically interpreting data to understand patterns, relationships, and meanings in the context being studied. With this approach, the study is expected to provide a comprehensive understanding of the legal problems being studied, both in terms of theory and

implementation in the field, so that it can contribute to the development of more effective legal policies.

3. Results and Discussion

Talking about victims of criminal acts in principle has been regulated separately in Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2016 concerning Protection of Witnesses and Victims. In the Law, it is stated that victims are people who experience physical, mental, and/or economic suffering caused by a criminal act (Harahap, 2016). The position of victims who experience such suffering certainly requires legal protection from the state (Wiguna, 2021). Legal protection is an effort to provide protection for human rights that are harmed by others and this legal protection is provided by law (Adisti & Mardiansyah, 2018; Manoppo, 2019).

Legal protection efforts for victims of criminal acts as stated in the Witness and Victim Protection Law are entitled to restitution and compensation. The definition of restitution in the Witness and Victim Protection Law states that restitution is compensation given to the victim or his family by the perpetrator or a third party (Nasirin & Lionardo, 2021). Meanwhile, compensation is compensation given by the state because the perpetrator is unable to provide full compensation for the losses that are his responsibility to the victim or his family (Larwuy et al., 2023). The reason victims of criminal acts can be given restitution is because the implications of the occurrence of criminal acts in turn cause losses and imbalances in conditions or the destruction of the community's trust system, so that in order to restore and restore such conditions, the perpetrator must replace the losses suffered by the victim (Sulistiani, 2022).

In the context of providing restitution and compensation that should be obtained by victims, it often cannot be realized because most people do not understand the process of submitting applications for restitution and compensation (Rahayu, 2015). This problem in turn causes disorientation so that many victims cannot have their rights in the form of obtaining compensation and restitution rights. Furthermore, in the context of enforcing the provision of compensation in this case, of course it becomes difficult because the perpetrators of the crime are children, so that the victims cannot obtain restitution rights. The provision of compensation rights refers to Article 7 paragraph (1) of Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2016 concerning Protection of Witnesses and Victims only relating to crimes of terrorism and gross human rights violations. Referring to the provisions contained in Article 7 of Law No. 26 of 2000 concerning the Human Rights Court, it is stated that gross human rights crimes only relate to crimes of genocide and crimes against humanity. Crimes against humanity are one of the acts committed as part of a widespread or systematic attack that is directly aimed at the civilian population. One of the acts that falls into the category of serious human rights crimes according to Article 9 of the Human Rights Court Law, relates to rape, sexual slavery, forced prostitution, forced pregnancy, sterilization or forced sterilization or other forms of sexual violence (Ananda et al., 2023).

Based on legal provisions, victims of sexual violence crimes are entitled to compensation as a form of legal protection. This compensation includes compensation for loss of wealth and/or income, as well as losses due to the crime, including physical injury or death. In addition, victims are entitled to reimbursement of treatment and medical expenses needed for recovery. Not only material losses, compensation also includes immaterial losses suffered due to the psychological and social impacts of the crime (Syaufi & Zahra, 2021; Aziz et al., 2023; Yohana et al., 2024). This mechanism aims to ensure justice and the restoration of victims' rights in full in the criminal justice system (Zakaria et al., 2023). In the process of applying for compensation, there are several requirements that must be met and must be submitted through the Witness and Victim Protection Agency. The application does

not need to include the identity of the perpetrator if the identity of the defendant or perpetrator of the crime is not yet or is unknown (Kenedi, 2017). For applications for compensation in certain criminal cases, there are additional requirements, such as a certificate from the investigator stating that the applicant is a victim of a crime of terrorism, a certificate from the National Human Rights Commission stating the applicant as a victim or heir of a victim of a serious human rights violation, and a certificate from the Representative of the Republic of Indonesia abroad for Indonesian citizens who are victims of a crime of terrorism outside the territory of the Republic of Indonesia (Saputra & Miswarik, 2021). This provision ensures that every victim obtains their rights fairly and in accordance with applicable legal procedures. However, the implementation of compensation is often not touched, considering that such procedures are often not understood by victims.

4. Conclusion

Law enforcement efforts against perpetrators of child crimes should prioritize restorative justice or diversion, by considering the best interests of the child's future. Restorative justice aims to resolve legal conflicts by involving the perpetrator, victim, family, and community in order to achieve a fairer and more humane solution. In the implementation of diversion, there are main requirements that must be met, namely that the crime committed by the child must have a criminal threat of less than seven years. This provision arises because the juvenile criminal justice system seeks to avoid the negative effects of depriving children of their liberty and emphasizes a rehabilitative approach rather than a repressive one. However, the limitation of the criminal threat of less than seven years in the implementation of diversion can create legal uncertainty, especially if a crime has flexibility in the application of minimum and maximum sanctions. In practice, this rule can lead to differences in interpretation and inconsistent application of the law. Therefore, clearer and more comprehensive regulations are needed so that the implementation of diversion remains in accordance with the main objective of child protection and does not create legal gaps in the judicial process.

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