

Implementation of Criminal Actions in Cases of Sexual Harassment of Children

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Abstract

A criminal act is an act that is not in line with the law, is committed because of someone's fault, and is considered an act against the law. Criminal acts that are currently rife are criminal acts due to cases of sexual violence against children. Basically children are a nation's asset that must be given a good understanding for their growth and development instead of being damaged by problems of sexual violence. Every perpetrator of sexual violence that occurs to children is subject to criminal punishment that has been regulated in several laws in Indonesia. However, the main problem is that the appropriate punishment for the behavior is not yet optimal. It is felt that protection for victims has not been carried out optimally.

I. Introduction

Humans living on this earth have the nature of being social humans who cannot live alone and need other people, because if humans live alone they cannot be called human beings. Aristotle said that humans are "zoon politicon" which means humans want to always be together with other humans. Every human being has different wants and interests but are always related to one another, this indicates that humans will not be able to live alone (Asyhadie & Rahman, 2013). In human life, objectively abnormal actions are referred to as acts against the law (Andi Hamzah, 2008). In other words, unlawful acts can be regarded as criminal acts. A criminal act is an act that is not in line with the law, is committed because of someone's fault, and is considered an act against the law. (Erdianto, 2010).

Today, the settlement of several criminal cases in Indonesia cannot be seen from just one point of view, but from various points of view, namely not only the point of view of the perpetrator, but the point of view of the victim who is harmed

materially and immaterially and provides protection for the victim by safe. In the current Criminal Code (KUHP), all of them feel that there has not been optimal action in handling criminal cases and feel that there is no direct formulation of provisions in terms of providing victims with legal protection. This Criminal Code also does not contain the type of criminal compensation, even though this is very useful for the victim or the aggrieved party itself (Sunarso, 2012). Considering the number of cases of sexual violence that currently exist in the neighborhood where one lives, it reminds us that such acts can easily be carried out anywhere, anytime, and by anyone. There are several examples of sexual cases, namely incest cases where sexual violence is committed because of marriage to someone who is still related by blood, another example is even more serious regarding cases of sexual violence in schools. The Criminal Code (KUHP) is currently considered unable to completely protect victims from sexual violence. The Criminal Code (KUHP) is too focused on punishment for the perpetrators, even though there are victims who are no less important to be given appropriate treatment. Victims currently do not receive optimal support in the Criminal Code It appears when compared to the position of the perpetrator (Didik et al., 2007).

Criminal acts are now also starting to take victims regarding children. Whereas basically children are the next generation as a national asset. The human rights that every child has are the same as human beings in general. The rights that every child has have received real protection from various parties considering that crimes in Indonesia are increasing and horrific. The impact arising from these crimes can interfere with the psychology of the child in carrying out the obligations that should be. With the rise of sexual violence in the mass media today, it is necessary to study more deeply from a legal perspective so that action can be taken clearly. This legal protection is given in the form of prevention (before sexual violence is committed), protection for the family of the victim's child, and protection for the family of the perpetrator. Every child deserves to be sued regarding his whereabouts specifically so that he can live safely and peacefully in Indonesia. This also includes tackling acts of sexual violence against children in Indonesia. Punishments for acts of sexual violence in Indonesia need to be enforced so that perpetrators of acts of sexual violence against children are deterrent (Hana, 2015).

Children must receive optimal protection from the state because of the equal status they should receive as Indonesian citizens. With that the government is obliged to uphold the law without exception. In order for children to carry out their rights and obligations, the state is obliged to provide protection for children. In essence, legal protection for children should be contained in legislation (Gultom, 2014).

At present a very crucial problem for children is acts of sexual violence which involve children as victims. This is also because the behavior of children regarding sexual orientation is too negative, which can be proven by the sexual behavior of minors. The sexual acts of children below are very concerning because they are too directed at criminal law actions that have violated the laws passed in Indonesia. This act of sexual violence against children is a new case that is currently happening in Indonesia (Fadhilah, 2015).

As a rule of law country, Indonesia is known as the sentencing system which means that there is a penal system in laws and regulations. This criminal law contains sanctions for violations of the law that are committed and is harsher when compared to other laws. This punishment also unites law enforcement which should occur according to expectations, not only thinking about the right response for the perpetrators of criminal acts. Basically, the existence of this criminal law is to give every individual a sense of security in social life. The law in this criminal law is to regulate and organize community life so that every community can live in an orderly manner. Crimes that befall children over time Sexual violence that occurs in children is one of them. If a victim of sexual violence, the impact is very dangerous because it can have a bad impact on the mental or psychological. The government should have made policies regarding preventive or repressive sexual harassment, especially sexual violence against children (Aprilianti & Sambas, 2019). The government has established regulations so that children have security in their development, namely in Law Number 4 concerning Child Welfare, it has been expressly stated that children have the right to be cared for and protected by the state negara (Yusyanti, 2020).

By protecting children in Indonesia, this indicates that protecting human resources as the nation's next generation. This effort must be instilled in children as early as possible so that they can continue to be maximal in the development of the Indonesian state. Every child has the right to get proper protection in his growth to develop in Indonesia. This child protection includes all actions as a form of guarantee so that children can be protected and can get their rights to live and develop (Nashriana, 2012).

Humans live and develop by having the same degree in the eyes of God where humans have the right to live socially in the society they run in order to obtain social welfare in their lives. Humans are members of society and also as creatures with a different personality. Humans as a unit in society whose behavior must be regulated. Order in society must be disciplined by pressing the rules on every rule that applies. With that, it becomes one of the obstacles of members of the organization or society. It would be even better if every human being could firmly uphold their interests without violating the rights of others (Dewi, 2015)..

With this the state is required to create rules that can make the views of every citizen to be able to deal with problems, especially the problem of sexual violence against children (Peter, 2005). Humans have long existed side by side with the developments they have experienced, which are expanding day by day so that they feel the mindset and pattern of life that they live in the future with technological advances in this era and in the future. For every society that continues to progress, the population growth will continue to increase and will have an impact on legal interests in Indonesia that are increasingly evident. In human relations with one another as members of society must know and understand the laws and actions that should be done or not.

Sexual violence as a crime is still considered common and can occur anywhere in the world, regardless of gender status, age, gender or age. This sexual violence occurs as a relationship because of the interaction that exists between children and other people and is used as an object to satisfy the sexual needs of the perpetrator. This action can occur because of a threat or coercion made by the perpetrator against the victim. This form of sexual violence can be in the form of sexual abuse or rape. Sexual violence against children is also known as child sexual abuse (Ningsih & Hennyati, 2018).

From the violence that occurred, it should also require action to be taken for the victims, how can they recover or be able to prevent this act of sexual violence against themselves. When viewed from the current developments, the government is only focused on punishing perpetrators without thinking about efforts to prevent or recover victims affected by sexual violence. The main point that is currently a problem is regarding criminal acts obtained by perpetrators who commit acts of sexual violence against children (Suryandi et al., 2020).

Crime as a form of violence that is developing in an increasingly developing society has more and more motives and types. This is a social reality that exists as a problem in society because there are always problems in every growth of society. This action is also a problem that makes people uneasy and can disrupt the welfare of society in Indonesia today (Putra, 2021). Sexual violence is a universal crime and can be found anywhere (Ningsih & Henyati, 2018).

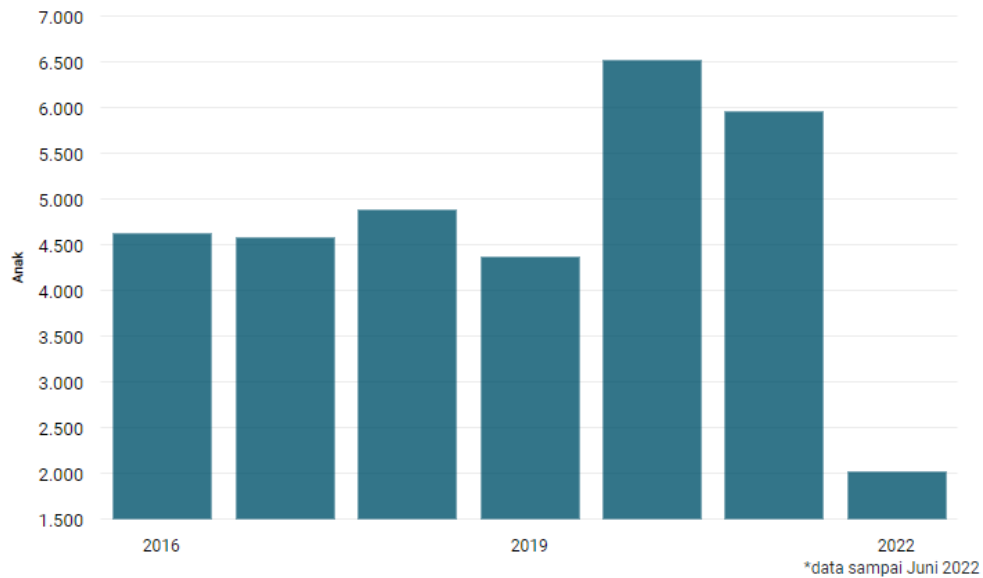


Figure 1 Number of Child Protection Cases Handled by KPAI (2016-Juni 2022)(Viva Budy Kusnandar, 2022)

This graph explains the cases of sexual violence that have occurred in Indonesia in recent years and in general they are still increasing every year. This indicates that acts of sexual violence cannot be resolved in Indonesia with the applicable laws, for the future it is necessary to study further about the laws in force in Indonesia.



Figure 2 Slogan to stop *child abuse* (Pulih, 2020)

2. Research Method

The research approach that will be used is the doctrinal legal research. more comprehensive explanation regarding criminal Law, starting from child abuse, and even its legal protection. By using literature review method, the authors have been conducted research from the previous studies on related topic. Before entering the main discussions, this paper also explains the present crime law and policy in Indonesia.

3. Results and Discussion

The Meaning of the Criminal Justice System Against Children

Protection of children in the criminal field must be carried out in all aspects of life (Maidin Gultom, 2014). Thus, protection of children under the legal umbrella will guarantee the child's future (Kamil & Fauzan, 2010). The rise of acts of sexual violence against children has also become one of the issues that is starting to happen a lot in Indonesia. Several laws in Indonesia have regulated several criminal acts against the perpetrators of these actions. The contents of the articles governing sexual violence against children include:

Tabel 1. The contents of the article containing the crime of sexual violence against children (Ranty Anggriani, 2022)

Article	Article content
Article 76 D Child protection Law	Individuals who can commit violence or sexual threats to children as a form of child protection.
Article 81 Child protection Law	(1) In Article 1 it has been explained that a person who commits an act of cruelty to a child will be subject to a maximum criminal offense of five years in prison and a maximum fine of five billion rupiah. (2) In this article 2 it is explained that every individual who intentionally has deception, lies to force children to commit sexual violence on children. (3) The criminal acts referred to in article one have been committed by those closest to them, such as nannies, guardians, parents, and educational staff may also receive a sentence plus 1/3 (one third) of the penalty referred to in paragraph (1)

Article 82 Child protection Law	(1) A person who violates Article 76E will receive a criminal action of a minimum of 5 years in prison and a maximum of 15 years in prison with a maximum fine of five billion rupiah. (2) In this article, if it is carried out by educational staff, guardians or parents, the criminal penalty will be added to 1/3 (one third) of the criminal threat as referred to in paragraph (1)''
Article 287 verse (1) KUHP	If a person has intercourse with a woman who is not his wife and the person is still 15 years old or not old enough to marry, he will be subject to a maximum sentence of 9 years.
Article 288 verse (1) KUHP	If a person who has intercourse with a woman who is not his wife or the person concerned is not old enough to enter into marriage, he will be subject to a criminal offense for a maximum of 4 years.

In carrying out the procedure for submitting restitution for victims of acts of sexual violence, especially children, it is known as restitution and compensation. These two things should be used as compensation for every victim of sexual violence, especially children. The difference between restitution and compensation can be seen through two things, namely compensation is a claim for compensation demanded by the victim which is paid by the community; while compensation is the compensation demanded by the victim against the perpetrator of the sexual crime. This compensation is not conditional on criminal convictions. Meanwhile, this restitution is a claim for compensation that is carried out by the court and must be paid by the perpetrator of the crime (Maya Indah S, 2014)..

This restitution is carried out by returning it to its initial activities, this can be used as a form of activity carried out by the victim so that it can be made the way it was before the condition of the problem occurred. Even though there is no victim who can return to normal. This statement is also a clear form of recovery. Activities that must be carried out for victims must be achieved so that recovery is complete and includes the impact of the crime that occurred. By submitting restitution, it is hoped that the victim will be able to provide freedom, legal rights, and social status (Sapti Prihatmini, 2019). There is confusion for victims about the mechanism to be used in filing a claim for restitution, which can be caused by the lack of harmony in the procedure for filing the right to restitution itself (Wagiman, 2007).

Legal provisions related to criminal intercourse with children using violence

People who have sexual intercourse with children who use violence or known as pedophilia come from the Greek words *paedo* (child) and *philia* (love). There is a psychosexual development that is owned by each individual, there is a developmental disorder, namely individuals who have an abnormal sense of excessive erotic desire. There are four categories of pedophilia, namely exclusive pedophilia, non-exclusive pedophilia, same sex pedophilia, and cross sex pedophilia (Supardi, 2005). There are two types of disorders that occur in psychosexuality, namely, hormonal pedophilia, namely abnormalities since the child is born in his biology. Second, habitual pedophilia, which is a sexual disorder that arises from the social conditions of the sufferer (Zainuddin, 2007). Pedophilia is the inability to have sexual intercourse with other adults. So with that, it can be understood that efforts to restore pedophilia are very difficult because sexual needs cannot be stopped and prevented (Wahyuni, 2011).

In the Criminal Code (hereinafter referred to as the Criminal Code) and Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection has regulated the criminal rules of pedophilia. But the formulation of the articles of the Criminal Code as well as those contained in Law no. 35 of 2014 however, until now it has not clearly described pedophilia itself. This Criminal Code regime only regulates crimes of decency, even though victims of perpetrators of acts of sexual violence that affect children at this time must also be further regulated regarding violations of immoral acts (C. Wijaya et al., 2021). Legal arrangements in Indonesia for perpetrators who have intercourse with children (pedophiles) who commit acts of intercourse or obscenity are regulated in the Criminal Code Article 290 point 2 and number 3 of the Criminal Code (Tongat, 2003).

Crime of Sexual Violence Against Children Regulated in Positive Criminal Law

Sexual violence is divided into several categories, including sex slavery, forced pregnancy, sexual crimes, sexual abuse, and sexual exploitation. Another category of existence is non-sensuous, namely forcing physical behavior such as sexual assault and rape. The categories in psychological abuse are sexual harassment, pedophilia, trafficked persons, sexual violence, incest, and sodomy (Sulistiani, 2016).

1. According Indonesian Law KUHP.

In our country there are several regulations governing sexual violence which are regulated in the form of law enforcement efforts. In the Criminal Code, this sexual violence is included in the crime of sexual violence which is contained in Chapter XIV Book II concerning Crimes of Decency Articles

281-303. There are several forms of criminal acts of decency in the Criminal Code which are in acts of sexual violence, namely:

In Article 285, it has been explained that rape has been explained regarding violence or threats to force a woman to have intercourse outside of an official marriage, a man who forces her to threaten to commit rape will be subject to a criminal offense with a maximum of twelve years in prison. If a woman is unconscious and raped, she will be subject to a maximum of nine years in prison outside of a legal marriage which has been regulated in Article 286. Then in Article 287 it has been explained that if a man has intercourse with a woman under fifteen years because she is not old enough, then she will maximum imprisonment of nine years. then in articles 289-290 it is explained that if you carry out sexual violence by force or coercion or allow obscene acts or tarnish immoral acts you will be subject to criminal action for a maximum of nine years imprisonment.

2. Sexual violence under the Child Protection Act

Judging from the aspect of child protection according to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is very clear that it has been regulated in Article 59 that all forms of implementation of child protection are clear and need to be carried out for all children who become victims of exploitation both economically and sexually. In Article 66, children who are victims of pornography are regulated in Article 67B, children who are victims of sexual crimes are regulated in Article 69A. The law has briefly explained the elements that go into sexual violence against children, although it only explains these 3 elements. In addition to the laws above, in Indonesia there are still several laws that are used to enforce laws relating to children, especially sexual violence, some of these laws include the following::

- a. Indonesian Law Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 About Child Protection.
- b. Indonesian Law Number 23 of 2004 Concerning the Elimination of Domestic Violence.
- c. Indonesian Law Number 44 of 2008 About Pornography.
- d. Indonesian Law Number 17 of 2016 Regarding the second amendment to Law Number 23 of 2002 concerning Child Protection.

3. According Indonesian Law Number 24 of 2004 on the Elimination of Domestic Violence. Sexual violence is also regulated in Law Number 24 of 2004 concerning the Elimination of Domestic Violence, namely at Article 8 explain :

- a. Forced sexual relations within the household.

- b. Sexual relations carried out based on commercial purposes or other purposes that have been specific to one person in the scope of the household.

Sexual violence that has been experienced by children within the scope of this household is also included in sexual violence. Many of the children who are victims of sexual violence today are committed by their own biological fathers. If a child experiences this, they will get excessive trauma because it was done by someone who feels they will not hurt them and someone who can guide them. This sexual category also includes trafficking for sexual purposes, sexual exploitation, and also slavery in the social field.

- 4. Sexual harassment committed against children.

At present, sexual violence is mostly committed against children who are still underage. Pornography is also a form of sexual violence. This form of pornography that affects every child is carried out by adults as an act of sexual violence. In Law Number 44 of 2008 concerning Pornography, it has been clearly explained if there is deviant behavior such as pornography committed against children as objects of sexual interest that they need..

As is well known, PERPPU for Child Protection was formed based on the following considerations (A. Wijaya & Ananta, 2016) :

- a. There is a guarantee from the state to provide protection for children so that their survival can take place properly.
- b. The facts regarding this act of sexual violence are a form of activity that threatens the life and mentality of children.
- c. There is a fact that perpetrators of acts of sexual violence have not created a deterrent effect (Arliman & Laurensius, 2015).

4. Conclusion

Criminal acts that are currently rife are criminal acts due to cases of sexual violence against children. A criminal act is an act that is not in line with what is currently in effect in Indonesia, is committed because of someone's fault, and is considered an act against the law. Basically children are the next generation of the nation whose development should continue to be honed so that they can become good successors instead of being damaged by current acts of sexual violence. Every human being who commits acts of sexual violence against children or can be called a pedophile. There are four categories in this pedophilia case. The laws and regulations in Indonesia have regulated the act of pedophilia. Sexual violence can be categorized as sexual crime, various forms including rape,

sex slavery and/or sex trafficking, forced pregnancy, sexual violence, sexual exploitation and/or sex abuse and abortion.

The criminal penalty for sexual violence is contained in the law, but there are several things that are felt to be not optimal and must be studied further regarding this matter. In the future, the protection of the victim must also be taken into consideration in the study of this crime so that the victim can also recover from what was done to him by the perpetrator. Even more so if it is done on children who are still in the developmental stage. Prevention education also needs to be massively expanded in this development in Indonesia.

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