

Juridical study of the role of the regional technical implementation unit for the protection of women and children in ensuring legal protection for child victims of sexual violence after the birth of law number 12 of 2022

**Nanci Yosepin Simbolon¹, Ria Sintha Devi², Alusianto Hamonangan³,
Muhammad Yasid⁴**

Nancisimbolon123@gmail.com, kokriasintha@gmail.com,
alusiantohamonangan@gmail.com, yasidfakultashukum@gmail.com

^{1,2,3,4}Universitas Darma Agung, Medan, Indonesia

Article Info

Received:2023-01-12

Revised:2024-01-13

Accepted: 2024-03-19

Keywords:

*Lega Sexual Violence
Crime; Law Number 12 of
2022 concerning Crimes
of Sexual Violence; Unit
for the Protection of
Women and Children*

Abstract

Law No. 12 of 2022 on Sexual Violence Crimes is the main and first specific provision on sexual violence crimes and complements the Indonesian criminal law tools used by law enforcement agencies for various sexual violence crimes. One of the law enforcement efforts related to sexual violence crimes is the establishment of coordinated services in the regions through the Regional Technical Implementation Unit for the Protection of Women and Children. Using an ethical-legal study this study adopts a conceptual approach and aims to identify the role of regional technical law enforcement units in the protection of women and children and attempts to prevent and combat sexual violence crimes from all aspects. Efforts to rehabilitate victims of sexually violent crimes. The results of this study. First the Sexual Violence Crimes Act is a very important special regulation that complements Indonesias criminal justice tools to combat sexual violence crimes. Second the Sexual Offenses Act provides legal protection for victims of sexual violence. Conduct investigations and victim protection and rehabilitation.

I. Introduction

Child means a person under 18 (eighteen) years of age. As descendants of the family and nation, parents and the state must protect children from violence and discrimination and fulfill their rights to dignity and status as human beings as they grow. Until now sexual violence against children has arisen in various forms and characteristics. The incidence of child sexual abuse is increasing rapidly on

social media every day with various incidents and incidents being reported. Sexual rape is a sexual crime that is usually an act of violation of modesty that violates modesty and is not against the will of the victim through threats of violence.

According to the Ministry of Women's Empowerment and Child Protection, 9,588 children will have been sexually molested by 2022. Up from 4,162 last year. Thus, Indonesia declared a child sexual violence emergency. As a result, child sexual abuse must be addressed properly. Basically, sexual violence is contrary to divine and human values and disturbs the security and peace of society. The increase in cases of sexual violence against children that occur every year is considered that the laws and regulations on sexual violence have not been optimal in providing prevention, protection, access to justice and recovery, and most importantly have not fulfilled the rights of children as victims of sexual violence.

When viewed from the perspective of criminal law, it has not been regulated extensively regarding sexual violence, so that so far there have been many cases of violence targeting children, both girls and boys as victims, but the cases have been hampered and cannot be continued or processed, this is This happened because previously all forms and types of cases of violence that could occur to children were not accommodated in the rule of law in Indonesia. The Penal Code (KUHP) recognizes only two types of violence namely rape and lewdness and the term sexual harassment is not recognized. This year the law n. 12 By 2022 Criminalize sexual harassment Forced sterilization Forced abortion Marriage Adultery and sexual assault.

With The Passing Of Law Number 12 Of 2022 Concerning Crimes Of Sexual Violence On April 12, 2022, It Is Hoped That It Can Fill The Gap In The Legal Vacuum Starting From Prevention Efforts, To Handling And Rehabilitation From A Victim's Perspective. One Of The Efforts Set Forth In The Crime Of Sexual Violence Is To Mandate That Provincial And District/City Governments Must Establish A Regional Technical Implementation Unit For The Protection Of Women And Children To Carry Out Handling, Protection, Recovery For Victims, Victims' Families, And/Or Witnesses. Of course, with the establishment of regional technical implementation units for women and children in provinces and districts/cities as a form of the state's presence in providing justice and protection for sexual violence victims, including children. Therefore, its implementation must be supported by good facilities and cooperation for all parties so that the appointment of the Technical Implementing Unit For The Protection Of Women And Children as an institution that provides justice and protection for sexual violence victims is not only mandated by law but also effective.

2. Research Method

The research method used in this study is a qualitative legal method that is to study the legal principles contained in the laws and court decisions involving criminal cases involving children and to use descriptive analysis methods. In legal studies the rule of law is examined interactively that is law as a value system and law as a social norm. Data collection techniques used by researchers are through documentation studies or through literature searches, namely by reading and researching books that contain descriptions relating to the problem. The data in this study were obtained through library research and document study techniques. The author in studying the issues related to the problems above is sourced from the literature relevant to these problems with primary legal sources originating from statutory regulations. Data processing and analysis involves seeking and preparing for all acquired papers and resources so researchers can interpret and report their findings. Data analysis is needed to solve and explain issues using legal documents. Based on the problem formulation, data is checked, marked, compiled, and systematized.

3. Results and Discussion

Criminal Law Enforcement Policies Against Child Victims of Sexual Violence Crimes

Violence is defined as physical action that causes harm, incapacity, disease, or suffering to others with force, refusal, or no permission. Violence may be physical or sexual. Article 1 of Law 12 of 2022 prohibits sexual violence. Crimes are any actions that meet this Law's components and additional acts of sexual assault that are not defined. According to the Elucidation of Law No. 12 of 2022, sexual assault is a breach of human rights, a crime against humanity, and a form of discrimination that must be eliminated. Article 28B(2) of the 1945 Constitution grants every child the right to grow and develop in life and to be free from violence and discrimination. The government guarantees the right of children to grow up and develop free from violence exploitation and prejudice.

Context Child sexual abuse is a form of sexual violence in which children are victims. In any ethnic culture or society child sexual abuse occurs when adults force them to engage in sexual activity with or without violence. Girls are more likely to be sexually assaulted than boys. Sexual violence causes psychological damage and stigmatizes child victims of sexual violence. Cases of sexual violence often go unresolved because of denial of the incidents of sexual violence that occurred. Denial of incidents of sexual violence is more common in children because children do not have the target or knowledge that they are victims of sexual violence. Victims of sexual violence tend to keep the sexual violence incidents secret because they feel threatened that they will experience worse things if they report them, and they feel ashamed because the events they are

experiencing can damage their family name so they do not report the perpetrators.

The Criminal Code (KUHP)

If law enforcement against child victims of sexual violence refers to the Criminal Code, then the indicator of sexual violence is very narrow, because it only stipulates that sexual violence is only in the form of rape and obscenity (fornication). This regulation also explains that rape and obscenity in the Criminal Code are violations of decency. In fact, rape is a form of violence or crime against a person or the integrity of a person's body/sexuality. Of course this is a weakness in the matter of adequate legal substance in cases of sexual violence. The next problem is in terms of proof, where the victim is required to prove it physically, it often cannot be proven and ends in injustice experienced by the victim, especially when children become victims. The limitation of the formulation of offenses in the Criminal Code regarding sexual violence is a deficiency in Indonesian criminal law, because of the reality that reports that reached Komnas Perempuan found that the types and methods of coerced sexual intercourse are very diverse.

Komnas Perempuan reported that at least 35 women were victims of sexual assault daily from 2001 to 2012. At least 4,336 occurrences of sexual assault were reported in 2012, 2,920 of which were public or community-based, with rape and obscenity (1620) being the most common. Sexual assault rose to 5,629 in 2013. Two ladies will be sexually assaulted within three hours. The victims were aged 13–18 and 25–40. Because of its association with morality, sexual assault against women is harder to detect and address. Komnas Perempuan lists 15 categories of sexual assault (National Council for Women 2013): 1) Rape; 2) Sexual threats, including rape attempts; Sexual harassment Sexual harassment 5) Sex trafficking; 7) Sexual slavery 8) Forced marriage, divorce, 11) Compulsory contraception and sterilization; Sexual assault 13) Torture 14) gender disparities, including traditional behaviors that injure women; 15) sexual dominance, including moral and religious discrimination. Due to inadequate evidence, the NCW feels the following 15 categories of sexual assault may not be exhaustive.

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

Law no. 23 2002 amended by the law for the protection of children. 35 2014 Art. 1 Article (2) of Law no. They should learn to be better as human beings and be protected from violence and discrimination. The state protects children from violence and discrimination and assures their survival, growth, and development. Child Protection Act criminalizes minor sexual offenders. This rule is essential for punishing offenders. The Child Protection Act punishes child molesters.

Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS)

The existence of Law Number 12 of 2022 about Crimes of Sexual Violence will become the major and first explicit rule in addressing these crimes, as well as a supplement to earlier laws and regulations that governed the content of these crimes. This law regulates the prevention of all forms of sexual violence, the handling, protection, and restoration of victims' rights, coordination between the Central and Regional Governments, and international cooperation to effectively prevent and handle sexual violence victims. To eliminate sexual assault, it governs community engagement in victim prevention and healing.

The application of Law Number 12 of 2022 concerning Crimes of Sexual Violence has four new breakthroughs: (1) apart from qualifying for the type of TPKS, there are also other crimes that are expressly stated as TPKS as regulated in other statutory provisions; (2) there are comprehensive procedural regulations starting from the stage of investigation, prosecution, and examination at trial courts while still paying attention to and upholding human rights; and (3) Indonesian Law Development Volume 4, Number 2, 2022, pages 170-196.

The Role of the Regional Technical Implementation Unit for the Protection of Women and Children in Protecting Children Victims of Sexual Violence

Regional Technical Implementation Unit for Women and Children (Technical Implementation Unit) Law number. 12 of 2022 against sexual violence (Sexual Violence Law) provides comprehensive services in numerous domains. The technical implementation unit of the women and children protection sector referred to in Article 1 paragraph 11 of the Law on TPKS is the technical implementation unit of business and child protection in the work unit related to government issues in the womens sector. Provides services for empowerment and women and children including comprehensive services for children.

Provincial and district/city Regional Governments are required to establish a Regional Technical Implementing Unit For The Protection Of Women And Children which organizes the Handling, Protection and Recovery of Victims, Victims' Families, and/or Witnesses. In carrying out their duties, it is very important to improve cooperation and collaboration between parties considering that the UPTD is an important center that will become the new governance, which is One Stop Service in nature, which means that each victim will be received and handled directly on the spot and not moved from one agency. to other agencies. The duties and responsibilities of the UPTD in handling cases of sexual violence against children are:

In terms of Reporting:

- a. Receiving every report from a victim or person who knows, saw, and/or witnessed an event constituting a Sexual Violence Crime

- b. Receive information from medical personnel or health workers if they find any suspicion of a crime of sexual violence
- c. Provide assistance and Integrated Services needed by Victims when receiving a TPKS incident report.

In the event that the UPTD receives reports and/or information submitted by victims, medical personnel, health workers, psychiatrists, psychologists, or social workers regarding the TPKS incident, the Technical Implementing Unit Of The Women And Child Protection Area is required to:

- a. Receive reports in a special room that guarantees the security and confidentiality of the Victim
- b. Organize psychological reinforcement for Victims
- c. Make a report to the police no later than 3 x 24 hours

In terms of Victim Protection:

If the police have received a report from the TPKS, within no later than 1 x 24 (one twenty-four) hours the police can provide temporary protection to the victim, which can be done through coordination and cooperation with the Technical Implementing Unit For The Protection Of Women And Children.

In case of Investigation:

If the child is a victim and/or witness of sexual violence, the investigator can carry out electronic recording or remote direct examination using an audiovisual communication device, with the consent or without the consent of the parent or guardian, and while still taking into account the best interests of the child. In the event that an examination at the investigative stage can be carried out at the Technical Implementing Unit Of The Women And Child Protection Area

In terms of handling, protecting and recovering victims:

- a. receiving reports or outreach to Victims;
- b. provide information about Victims' Rights;
- c. facilitate the delivery of health services;
- d. facilitate the provision of psychological reinforcement services;
- e. facilitating the provision of psychosocial services, social rehabilitation, social empowerment, and social reintegration;
- f. provide legal services;
- g. identify the need for economic empowerment;
- h. identify the need for temporary shelter for Victims and Victims' Families that need to be met immediately;

- i. facilitating the needs of Victims with Disabilities;
- j. Collaborate with other agencies to realize the rights of victims; And
- k. Monitor the enforcement of the rights of victims in judicial proceedings by law enforcement officials.

The cooperation can be carried out by the Technical Implementing Unit For The Protection Of Women And Children in carrying out their duties and functions by:

- a. community health centers, hospitals and other health care facilities;
- b. technical implementing unit dealing with social affairs;
- c. detention houses, correctional institutions, and correctional centers;
- d. police;
- e. prosecutors;
- f. court;
- g. the technical implementation unit of the agency administering the protection of migrant workers;
- h. regional offices of ministries that carry out government affairs in the field of religion;
- i. regional offices and technical implementing units of ministries dealing with government affairs in the field of law and human rights;
- j. LPSK representatives in the regions;
- k. Social Welfare Organizing Institutions;
- l. Community-Based Service Provider Institutions; and
- m. other institutions.

A technical implementing agency for the protection of women and children must be established within three years of the enactment of this law. Working groups for womens empowerment and child protection carry out comprehensive services in their respective areas. The introduction of a regional technical unit for the protection of women and children will ensure that authorities respond quickly and appropriately to all the needs of victims of violence in order to maintain integrated services for the protection of women and children in the future. Her first priority as a civil servant in the regional implementation of the Technical Unit for Women and Children is to ensure that victims receive comprehensive services tailored to their needs.

4. Conclusion

Based on the results and discussion, it can be concluded that Indonesian criminal law provisions for sexual assault are supplemented by Law Number 12 of 2022. Regional Technical Implementation Units for the Protection of Women and Children in provinces and districts/cities report, protect, investigate, handle, and recover victims of sexual violence under the TPKS Law. In the future, service workers must quickly and accurately implement integrated services for the protection of women and children through this regional technical implementing unit. Provincial and district/city Regional Governments are required to establish a Regional Technical Implementing Unit For The Protection Of Women And Children which organizes the Handling, Protection and Recovery of Victims, Victims' Families, and/or Witnesses. In carrying out their duties, it is very important to improve cooperation and collaboration between parties considering that the UPTD is an important center that will become the new governance, which is One Stop Service in nature, which means that each victim will be received and handled directly on the spot and not moved from one agency to other agencies.

References

- Al Djufri, Helmi & Nurul Amalia, Konsep Dan Definisi Kejahatan Seksual Serta Penyimpangan Perilaku Seksual Dalam KuHPidana, dalam Kekerasan Seksual Vs Kejahatan Seksual, Problem Paradigma Sexual Consent Dalam RUU P-KS, Jakarta: AILA, 1442/2020.
- Alawiyah, Tutty A.S, Kata Sambutan dalam buku Tindak Pidana Narkotika dari Moh Taufik Makarao, et.al, Jakarta: Galmia Indonesia, 2003.
- Ali, Marus, Dasar-Dasar Hukum Pidana, Sinar Grafika, Jakarta, 2011.
- Arief, Barda Nawawi, Beberapa Aspek Pengembangan Ilmu Hukum Pidana, Pidato Pengukuhan Guru Besar pada Fakultas Hukum Universitas Diponegoro, 25 Juni 1994.
- CNN Indonesia, "KemenPPPA: RI Darurat Kekerasan Seksual Anak, 9.588 Kasus Selama 2022", <https://www.cnnindonesia.com/nasional/20230127173509-20-905780/kemenpppa-ri-darurat-kekerasanseksual-anak-9588-kasus-selama-2022>, diakses pada 28 Januari 2023.
- Hanafi, Amrani, Politik Pembaruan Hukum Pidana, UII Press, 2019.
- Hawari, Dadang, Psikopatologi Kejahatan Seksual, Depok: Badan Penerbit Fakultas Kedokteran Universitas Indonesia.

- Ikhsan, Edy, Beberapa Catatan tentang Konvensi Hak Anak, Fakultas Hukum USU, 2002.
- International, ECPAT, Tanya & Jawab tentang Eksploitasi Seksual Komersial Anak Sebuah Buku Saku Informasi, 2001.
- Irianto, Sulistyowati dkk, Perempuan di Persidangan: Pemantauan Peradilan Berperspektif Perempuan, Jakarta: Nzaid, Convention Watch Universitas Indonesiadan Yayasan Obor Indonesia, 2006.
- Ishak, Otto Syamsuddin, Pancasila, Hak Asasi Manusia dan Ketahanan Nasional, Komnas HAM Republik Indonesia, 2016.
- Ivo Noviana, 2015, Kekerasan Seksual Terhadap Anak: Dampak dan Penanganannya, Jurnal Sosio Informa, Vol. 01, No. 1 Jurnal Pembangunan Hukum Indonesia Volume 4, Nomor 2, Tahun 2022
- Jan, Remmelink, Hukum Pidana: Komentar atas Pasal-Pasal Terpenting Dari Kitab Undang Undang Hukum Pidana Belanda dan Padanannya Dalam Kitab Undang-Undang Hukum Pidana Indonesia, PT.Gramedia Pustaka, Jakarta, 2003.
- Kalyanamitra, Menghadapi Pelecehan Seksual, Jakarta: Kalyanamitra Pusat Komunikasi dan Informasi Perempuan, 2009.
- Kania, Dinar Dewi, Kejahatan Seksual Vs Kekerasan Seksual, dalam Kekerasan Seksual Vs Kejahatan Seksual, Problem Paradigma Sexual Consent dalam RUU P-KS, Jakarta: AILA, 2020.
- Kanter, E.Y. dkk, Asas-Asas Hukum Pidana di Indonesia dan Penerapannya, Stori Grafika, Jakarta, 2012.
- Kementrian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia. (2022). *Menteri Pppa: Mekanisme One Stop Services Uptd Ppa Hadirkan Layanan Terpadu Perlindungan Perempuan Dan Anak*. Kemenpppa. <https://www.kemenpppa.go.id/index.php/page/read/29/4287/menteri-pppa-mekanisme-one-stop-services-uptd-ppa-hadirkan-layanan-terpadu-perlindungan-perempuan-dan-anak>