

Implementation of Criminal Sanctions to Sexual Violence with Under Children (Case Study of Child Abuse in Makassar)



Dwi Tatak Subagiyo¹, H. Sulistiyo²

^{1,2}Faculty of Law, Wijaya Kusuma Surabaya University; Jl. Dukuh Kupang XXV No. 54 Post Code 60225

ABSTRACT: The study entitled Application of Sanctions Against Crimes Against Sexual Abuse of Children Under Age aims first to find out and understand what factors cause children to commit sexual violence. Secondly to find out, understand and analyze the application of sanctions for children who commit sexual violence according to the Criminal Justice System for Children. The research method used in this thesis uses a normative research method which is a study conducted by examining all laws and regulations relating to the problems (legal issues) encountered. Based on the results of the study it can be concluded First: that the cause of children can commit acts of sexual violence is due to environmental factors around them because children are easily affected and technological factors that are rapidly developing technology can greatly affect children in committing sexual violence. Second: the application of sanctions for children must be prioritized diversion with justice restorative that involves all parties ranging from perpetrators, victims, parents and law enforcement officials and when the diversion with justice efforts restorative do not produce results and an agreement to eat criminal sanctions (Ultimatum Remidium) is the last resort.

KEYWORDS: criminal acts; restorative justice; diversion; ultimatum remidium

I. INTRODUCTION

At this time, there are many cases of violence or sexual harassment that occur at various ages, from children, adolescents, adults and the elderly. Sexual violence against children can happen anywhere and anytime. Even places that are considered safe can become places that are dangerous for the child and leave trauma.

Children need to get protection from the negative impacts of rapid development, the flow of globalization in the field of communication and information, advances in science and technology, as well as changes in the style and way of life of some parents who have brought about fundamental social changes in people's lives which greatly affect their values. and child behavior.

Deviations or unlawful behavior or actions committed by children, among others, are caused by factors outside the child's self. Juvenile delinquency always increases every year if you look at the criminal acts committed by children so far, both in terms of quality and the modus operandi committed, sometimes it is felt that the violations committed by children have disturbed all parties, especially parents. The phenomenon of increasing violent behavior by children seems to be not directly proportional to the age of the perpetrator.¹

One of the efforts to prevent and overcome juvenile delinquency today is through the implementation of the juvenile justice system. The purpose of administering the juvenile justice system is not solely aimed at imposing criminal sanctions on children who have committed criminal acts, but is more focused on the premise that imposing sanctions as a means of supporting the welfare of children who commit crimes.

Based on the results of the study, children under the age of 14 (fourteen) years who saw a sexual relationship, were more involved in sexual deviation practices, especially rape. This is because they claim to feel aroused by seeing the sex scenes they previously watched.² This child's deviant behavior, of course, starts from curiosity, then they try to find out what sex is in their own way.

Data from the Indonesian Child Protection Commission (KPAI) from the beginning of 2018 to the end of February 2018, the number of victims of violence against children in Indonesia has reached 117 children and 22 perpetrators. Data from the Indonesian Child Protection Commission (KPAI) is quite surprising if you look at 2017, there were 393 children and 66 perpetrators.³

The application of criminal sanctions against perpetrators of criminal acts of obscenity is not only against adults, but also applies to children who are perpetrators of criminal acts of obscenity. The definition of children can be found in the Law of the

¹ Nandang Sambas, 2010, Pembaharuan Sistem Pemidanaan Anak di Indonesia, Graha Ilmu, Yogyakarta, hlm. 103.

² Alya Andika, 2010, Ibu: Dari Mana Aku Lahir?, Yogyakarta, Pustaka Grhatama, hlm. 30.

³ <http://jakarta.tribunnews.com/> diakses pada tanggal 21 Februari 2023, pukul 01.10 WIB.

Implementation of Criminal Sanctions to Sexual Violence with Under Children (Case Study of Child Abuse in Makassar)

Republic of Indonesia Number 35 of 2014 concerning Child Protection (abbreviated as UUPA). Article 1 point 1 UUPA provides an understanding of a child as someone who is not yet 18 (eighteen) years old, including those who are still in the womb.

In the case of children as perpetrators of criminal acts of obscenity, the UUPA is used to apply criminal sanctions to children who are in conflict with the law. The reason for using the UUPA in this case is that children's rights while undergoing the legal process can still be fulfilled and protected. A child in conflict with the law is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime.

The imposition of punishment is very closely related to criminal liability where the convicted person must be able to account for his actions,⁴ elements of criminal responsibility, namely a. commit a crime b. above a certain age can be responsible c. has a form of error in the form of intentional or negligent d. the absence of reasons for forgiveness, the principle and elements of criminal responsibility also apply to children who commit crimes.⁵

For example, the case that occurred in the city of Bandar Lampung was shocked by the incident of child abuse with the perpetrator still in junior high school with the initials M (12) and the victim still attending elementary school with the initials F (10) on Wednesday 3 October 2018 there was a resident who saw these two children enter the mosque bathroom at the same time and finally the residents caught these two children with their pants down.⁶

Children who commit crimes of sexual violence can be held criminally responsible if they reach 14 (fourteen) years of age. If at the time of committing the crime the child is over 12 (twelve) years old, but has not reached the age of 14 (fourteen) years, then the penalty that can be given to the child is a maximum of ½ (half) of the adult prison sentence. But if the crime committed by the child is punishable by death or life imprisonment, then the sentence imposed is imprisonment for a maximum of 10 (ten) years. Based on the statement as in the background, there are the following problems: 1. What are the factors of children in committing acts of sexual violence; 2. How is the application of criminal sanctions against children who commit sexual violence.

II. RESEARCH METHOD

This research is a normative legal research in which this study examines and explains from the perspective of the law in the research itself. The approach used in this research is a statute approach and a conceptual approach.

The statutory approach (statute approach) is "Research conducted by examining all laws and regulations that are related to the legal issues being handled".⁷ In this statutory approach, laws related to notary law, evidentiary law and filing law will be examined and the conceptual approach is "an approach that departs from the views and doctrines that have developed in the science of law. Understanding of these views and doctrines is a basis for researchers in building a legal argument in solving the issues at hand."⁸

III. DISCUSSION

1. Definition of Sexual Crimes Factors for Children to commit Sexual Crimes

There are many similarities regarding sexual violence, intercourse, obscenity, immoral acts, harassment and rape. The factors leading to the emergence of this kind of crime have almost the same motive. Women and minors, who are generally the targets of crime, have many negligence and weaknesses to become victims of harassment, sexual violence and even rape.

These various factors are related to the position of the victim in the relationship between the victim and the perpetrator. This means that there has been a prior relationship (within a certain intensity measure) between the victim and the perpetrator, so the presentation is quite small. Horizontal relations (men and women) have been used by men to experiment with carrying out and justifying counter-productive and inhumane acts.⁹

The perpetrator takes advantage of the negligence, weakness and perhaps the mistake of the victim, whose behavior directly or indirectly encourages the perpetrator to commit a crime. Women (victims) quickly believe in persuasion, appearances and close relationships, which causes them to be in a dependent position or need the presence of men.¹⁰

A. Definition of Sexual Crime

Advances in technology today greatly affect the pattern of life of people in Indonesia, from those living in big cities to remote rural areas, from old age to children. Everything in everyday life can not be separated from the world of technology.

⁴ Moeljatno, 2009, *Asas-asas Hukum Pidana*, Jakarta, Rineka Cipta, hlm. 165.

⁵ Ibid.

⁶ TribunLampung.co.id

⁷ Peter Mahmud Marzuki, 2013, *Penelitian Hukum (Edisi Revisi)*, Kencana Prada Media Group, Jakarta, hlm. 133.

⁸ Ibid.

⁹ Abdul Wahid dan Muhammad Irfan, *Perlindungan Terhadap Korban Kekerasan Seksual Advokasi Hak Asasi Perempuan*, hlm. 66

¹⁰ Ibid.

Implementation of Criminal Sanctions to Sexual Violence with Under Children (Case Study of Child Abuse in Makassar)

Technology does, on the one hand, make this world feel borderless, but on the other hand it has a huge impact on people's behavior patterns. The influence of technology can make the perpetrator act negatively, so that he commits a deviant act or in other words commits a crime including a crime of decency or sexual intercourse between children.

Phase of Life	Forms of Sexual Violence
Before Birth	Abortion due to sex selection Torment during pregnancy Forced pregnancy
Baby	Murder of girls Physical and emotional abuse Differentiating access to food and medical care for baby girls
Children	Child marriage Sexual harassment by family members and strangers Differentiating access to food and medical care for girls Child prostitution
Teenager	Courtship violence Prostituted teenagers Sexual harassment Rape Prostitution and trafficking of women
Reproductive Age	Torture of women by male partners Rape in marriage Torture and murder for dowry Murder by male partner Psychological Torture Workplace harassment Harassment of disabled women
Old Age	The neglect and humiliation of widows and old women Exclusion and coercion by widows and old women Cruel treatment of widows and old women

Rape does not have to be in the form of coercion, but can also be through a harmonious relationship in which there are a number of manipulations. Relational manipulation of unequal relations between men and women, in general, hides behind the slogan "want and want, like and like". The slogan is also an effective tool to get rid of all the risks that arise from sexual relations that occur.

There are several stages that should be watched out for as a process leading to rape, namely:

1. Invite to go for a walk holding hands;
2. Invitation to go for a motorcycle ride with your arms wrapped around your waist;
3. Invitation to watch movies and the opportunity to do groping and kissing;
4. Invitation to go to places of recreation and maybe lodging followed by intercourse;
5. If a pregnancy occurs, the man in question runs away and is not responsible.¹¹

B. Juvenile Delinquency

Juvenile delinquency based on the view of social science, deviant behavior will be identified as a social problem if the perpetrator does not succeed in going through the social learning process (socialization). Deviant behavior can also be seen as a manifestation of the social context. Deviant behavior cannot be seen simply as an inappropriate action, but rather as a result of the interaction of improper transactions between a person and their social environment. The failure of social learning or errors in interacting from social interaction is then manifested in the form of deviant behaviors.¹²

Two Types of Juvenile Delinquency:

1. Legal Aspect

Juvenile delinquency in the two groups is related to legal norms.

¹¹ Wahyuni, Sosiologi Anak, Prenadamedia Group, Jakarta, hlm. 218.

¹² Jamal Ma'umur Asmani, 2012, Kiat Mengatasi Remaja di Sekolah, Buku Biru, Yogyakarta, hlm. 94.

Implementation of Criminal Sanctions to Sexual Violence with Under Children (Case Study of Child Abuse in Makassar)

- a. Delinquency that is immoral and social in nature, and is not mentioned in the law so that it cannot or is difficult to classify as a violation of the law.
- b. Delinquency that is unlawful with settlement in accordance with applicable law and law is the same as unlawful acts.

2. By Shape

Juvenile delinquency according to Sunarwiyati S. as quoted by Jamal Ma'mur Asmani is divided into three levels:

- a. Ordinary mischief, such as fighting, wandering, skipping school, leaving the house without saying goodbye and so on.
- b. Delinquency that leads to violations of crime, such as driving a car without a license, taking parents' things or stealing and so on.
- c. Specific delinquency, such as drug abuse, free sex outside of marriage, rape and others.

1. Internal Factors (endogenous)

Internal factors take place through the process of self-internalization which is wrong by adolescents in responding to the wrong or irrational milieu (environment) around them from the learning process, which is manifested in the form of their inability to adapt to the surrounding environment. Then, they carry out escape and self-defense mechanisms in the form of maladaptive, aggressive habits and violations of social norms and formal laws.

a. The search for identity

Entering puberty, usually children will look for their true character. They will have a character building crisis until they get it. In this phase, the role of the family and the surrounding environment become supporting factors for character building. If a teenager gets good direction and attention they can avoid juvenile delinquency.

b. Weak Self-Control

Even though the family has given the right direction and upbringing. Sometimes, a teenager has a weakness in self-control. They have not been able to control their emotions and curiosity properly, so they easily fall prey to juvenile delinquency.

2. External factors (exogenous)

External factors are all external stimuli and influences that cause certain behavior towards adolescents. These factors, for example acts of violence, crime, mass fights and so on, are seen and then imitated by teenagers.

In connection with crimes committed by individuals that do not necessarily appear and grow within a person, of course there is a cause.

a. Family

The family is the closest social environment for raising, maturing and in it children get education for the first time. The family is the smallest community group, but it is the most powerful environment in raising children, especially for children who have not gone to school. Therefore, the family has an important role in child development, a good family will have a positive effect on child development, while a bad family will have a negative effect. Since children are brought up by the family from a young age and henceforth, most of their time is in the family, it is appropriate that some of the possibilities for delinquency to arise come from the family.

As for the family that can be the cause of the emergence of delinquency can be in the form of an abnormal family (broken home) and a situation where the number of family members is less favorable.

In a broken home, in principle, the family structure is no longer complete due to the following:

- a. One of the parents or both died.
- b. Parents divorce.
- c. One of the parents or both are absent for a long period of time

Abnormal family conditions not only occur in broken homes, but in modern society there is often a symptom of a quasi-broken home, namely that both parents are still intact, but because each family member (father and mother) Each has a busy life so that parents do not have time to pay attention to the education of their children.

In this context regarding this phenomenon, it is not uncommon for parents to be unable to meet their children. Try to imagine the parents returning from work, the children playing outside, the children coming home, the parents leaving again, the parents coming, the children sleeping, and so on. This kind of situation is clearly unfavorable for child development. In such a family situation, children experience frustration, experience psychological conflicts, so that this situation can also easily encourage children to become delinquent.¹³

Basically, child contact caused by a broken home can be overcome or overcome in certain ways. In a broken home, the way to deal with children not becoming delinquents is that parents who are responsible for caring for their children should be able to give

¹³ Bimo Walgito, 1978, *Kenakalan Anak*, Yogyakarta, Fakultas Psikologi Universitas Gadjah Mada.

Implementation of Criminal Sanctions to Sexual Violence with Under Children (Case Study of Child Abuse in Makassar)

full affection so that the child feels as if he has never lost his father and mother. Besides that, the child's physical needs must also be met as appropriate so that the child avoids unlawful acts.

b. Association Factor

It must be realized that how much influence is played by the child's social environment, especially due to its cultural context. In a relaxed social situation, children then distance themselves from their families and then uphold their own existence which is considered as being excluded and threatened. They then enter a new family unit with a new subculture that is delinquent in nature. Thus, children become delinquent because they are heavily influenced by various social pressures, all of which exert a pressing and coercive influence on the formation of bad behavior, as a product of which children do not like to violate rules, social norms and formal laws. These children become delinquent/evil as a result of psychological transformation as a reaction to external influences that suppress and force their nature.

In connection with this event, in this case the role of parents is to awaken and restore the child's confidence and self-esteem is very necessary. It is necessary to be formal and assertive so that they are protected from influences that come from social circles which is not good.

c. Mass Media Influence

The influence of the mass media is no less big on children's development. The desire or will that is instilled in children to do evil sometimes arises due to the influence of readings, pictures and movies. For children who fill their free time with bad readings, this will be dangerous and can prevent them from doing good things. Likewise, watching pornographic images will stimulate children's sex. Sexual stimulation will negatively affect the development of the child's soul.

Regarding film entertainment (including VCDs), sometimes it has a good psychological impact, however, this entertainment can have an unfavorable influence on the development of a child's psyche if the viewing involves acts of violence and crime, for example, detective films that have a criminal figure as the main role and other films. action film full of violent scenes with a backdrop of revenge. The film scenes will easily influence children's behavior in everyday life. This destructive condition can negatively affect the development of children's behavior. educating children to be formal and firm so that they are protected from influences that come from unfavorable social environments.

Therefore, efforts that can be made are by holding poor quality films to censor children's psychology and directing children to shows that focus more on educational aspects, holding lectures through the mass media on educational issues in general, conducting supervision of distribution of comic books, magazines, advertisements and so on.

C. The Principles of the Juvenile Criminal Justice System

Children who are suspected or as perpetrators of criminal acts are handled based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In every case involving children as perpetrators, a juvenile criminal justice system applies which as a whole pays attention to what is contained in the SPPA Law. Bearing in mind that what is meant by the juvenile justice system is the entire process of resolving cases of children who are in conflict with the law starting from the investigation stage to completion or subsystems of the juvenile justice system, every apparatus, namely the National Police, the Prosecutor's Office and the Court must pay attention to the principles referred to in the Law -Law on Juvenile Criminal Justice System. Based on the principles referred to in Article 2 of the SPPA Law, it states that:

Every juvenile criminal trial is carried out based on the following principles:

1. Protection

What is meant by "protection" includes activities that are direct and indirect in nature from actions that endanger the child physically and/or psychologically.

2. Justice

Justice is that every settlement of a child's case must reflect a sense of justice for the child.

3. Non-discrimination

Non-discrimination is the absence of differential treatment based on ethnicity, religion, race, class, gender, ethnicity, culture, language, legal status of the child, order of birth of the child, and physical and/or mental condition. Its relation to children as perpetrators of crimes of sexual violence against children must be treated without discrimination. Both children as perpetrators and children as victims of criminal acts must receive protection.

4. The best interests of the child

The best interest for the child is that all decision making must consider the child's survival and development. Every decision taken against a child who is in the judicial process must be in the best interest of the child, according to the child's needs.

Implementation of Criminal Sanctions to Sexual Violence with Under Children (Case Study of Child Abuse in Makassar)

5. Appreciation of children's opinions

Respect for the child's opinion is that the child is respect for the child's right to participate and express his opinion in decision-making, especially when it comes to matters that affect the child's life as a perpetrator of a crime, he must be given the opportunity to express his opinion as a form of child responsibility for all the actions he has committed.

6. Survival in child development

The survival and development of children are the most basic human rights for children which are protected by the state, government, community, family and parents.

7. Development and guidance of children

Coaching is an activity to improve the quality, piety to God Almighty, intellectual, attitude, behavior, training, skills, professionalism, as well as the physical and spiritual health of the child both inside and outside the criminal justice process
Guidance is the provision of demands to improve the quality of piety to God Almighty, intellect, attitude and behavior, skills training, professionalism, as well as the physical and spiritual health of the child.

8. Proportional

What is meant by proportional is that all behavior towards children must pay attention to the limits of the child's needs, age and condition. The handling of cases of children as perpetrators of criminal acts based on the SPPA Law is closely related to the severity, actions of the child's personal circumstances or circumstances at the time the act was committed or what happened later can be used as a basis for consideration by law enforcement officials in handling cases of children as perpetrators of crimes.

9. Deprivation of liberty and punishment as a last resort (ultimum remedium)

Deprivation of independence is a last resort, meaning that children cannot be deprived of their freedom unless forced to settle cases. Article 3 letter g of the SPPA Law stipulates that deprivation of liberty and sentencing as a last resort must be carried out in the shortest amount of time.

10. Avoidance of retaliation

Avoidance of retaliation is the principle of imposing retaliation in the criminal justice process. Children as perpetrators of criminal acts are held accountable for their actions before the law based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The SPPA Law emphasizes that the settlement of cases of children who are suspected or as perpetrators of criminal acts is not only through the judicial process which, if legally and convincingly proven, ends in the imposition of sanctions.

D. Types of Sanctions and Actions According to the SPPA Law

The SPPA Law is one of the laws that expressly uses two types of sanctions at once (double track system), namely in the form of punishment (straf) and action (maatregels). Through the implementation of the two-track system, it is expected to reflect justice for both perpetrators, victims and society. Use m To clarify the types of sanctions for children, both in the form of crimes and actions, it is necessary to explain the types of criminal sanctions and actions for children based on the SPPA Law.

1. There Are Several Types of Criminal Sanctions for Children

The types of criminal sanctions for children based on the SPPA Law are differentiated into principal punishment and additional punishment. Based on Article 71 paragraph (1) of the SPPA Law, the principal punishment for children consists of.

a. Warning sentence

A warning sentence based on Article 72 of the SPPA Law is a light crime that does not result in restrictions on the release of children.

Warning sentences are not clearly stated in the general elucidation of the SPPA Law. As a study material, warnings for children in the SPPA Law are almost similar to warnings in Dutch criminal law. The purpose of a reprimand based on Dutch criminal law is in accordance with the nature of a reprimand consisting of words aimed at correcting what was said by the judge to the convict relating to the criminal act that had been committed by the convict. The sentence must be carried out immediately without waiting for the time when the judge's decision has obtained the force of decision.

b. Conditional punishment

Penalties with conditions can be imposed by a judge in terms of imprisonment for a maximum of 2 (two) years. Based on Article 73 paragraph (1) jo, paragraph (2) jo, paragraph (3) jo, paragraph (4) the SPPA Law can be understood as a crime with the condition that the sentence imposed by the judge on the child does not need to be carried out as long as the criminal period fulfills general conditions in the form of not committing a crime and special conditions in the form of doing or not doing certain things stipulated in the judge's decision while still paying attention to the freedom of the child.

The criminal period with special conditions is longer than the criminal period with general conditions. The maximum term of the sentence is 3 (three) years. While serving the criminal period with conditions, the Public Prosecutor will supervise and the

Implementation of Criminal Sanctions to Sexual Violence with Under Children (Case Study of Child Abuse in Makassar)

Community Advisor will provide guidance so that the Child fulfills the specified requirements. As long as the woman is serving her sentence, the condition is that the child must attend 9 (nine) years of compulsory education.

c. Work training

Based on Article 78 of the SPPA Law, job training crimes are carried out in institutions that carry out job training that is adjusted to the age of the child. Job training punishment is imposed for a minimum of 3 (three) months and a maximum of 1 (one) year. The elucidation of Article 78 paragraph (1) of Law Number 11 of 2012 states that what is meant by institutions that carry out job training include, among others, job training centers, vocational education institutions that are implemented, for example by ministries that carry out government affairs in the fields of employment, education or social .

d. Institutional coaching

Punishment for coaching in institutions is carried out at job training places or coaching institutions organized by both the government and the private sector. Based on Law Article 80 SPPA, coaching in institutions is carried out for a minimum of 3 (three) months and a maximum of 24 (twenty four) months. Children who have undergone ½ (one and a half) of the duration of coaching in the institution and not less than 3 (three) months of good behavior are entitled to parole.

e. Prison

Special minimum provisions for imprisonment do not apply to children. Provisions regarding imprisonment in the Criminal Code also apply to children as long as they do not conflict with the SPPA Law. Children are sentenced to imprisonment in LPKA if the child's circumstances and actions will endanger society. Imprisonment sentences that can be imposed on children are no longer than ½ (one half) of the maximum sentence of imprisonment for adults. Coaching at LPKA is carried out until the child is 18 (eighteen) years old. Further explanation that a child who has undergone ½ (one half) of the duration of coaching at LPKA and has good behavior is entitled to parole. If the crime committed by the child is not a crime punishable by death or life imprisonment, the sentence imposed is imprisonment for a maximum of 10 (ten) years. In his explanation it is explained that what is meant by "maximum threat of imprisonment for adults" is the maximum threat of imprisonment for a crime committed in accordance with the provisions of the Criminal Code or other laws.

In relation to juvenile criminal sanctions as described above which are the main types of punishment for children, further explanation that the types of additional criminal sanctions for children in detail based on Article 71 paragraph (2) of the SPPA Law states that additional punishment consists of:

- a. Deprivation of profits obtained from criminal acts or.
- b. Fulfillment of customary obligations.

2. Types of action sanctions for children

Based on the provisions of Article 82 of Law Number 11 of 2012, sanctions for actions that can be imposed on children include:

a. Returns to parents/guardians

Return to parents is the child being handed back to the parents consisting of father and mother. Meanwhile, the return to the guardian is the handing over of the child to the parent or agency that actually exercises parental authority over the child.

b. Surrender to someone

Based on Article 83 paragraph (1) of the SPPA Law, the act of handing over a child to someone is done for the benefit of the child concerned. In the explanation it is explained that what is meant by "surrender to someone" is surrender to an adult who is considered capable, well-behaved and responsible, by the judge and trusted by the child.

c. Treatment in a mental hospital

Explanation of Article 82 paragraph (1) of Law Number 11 of 2012 that this action is given to children who at the time of committing a crime suffer from mental disorders or mental illness.

d. Treatment at the Social Welfare Organizing Institution (LPKS)

Based on Article 83 paragraph (2) this action is imposed for a maximum of 1 (one) year. The act of caring for children is intended to assist parents/guardians in educating and providing guidance to the child concerned.

e. Obligation to attend formal education and/or training conducted by the government or private bodies

The act of obligation to attend formal education and/or training conducted by the government or private bodies is imposed for a maximum of 1 (one) year.

f. Revocation of driving license

The act of revoking a driving license is subject to a maximum of 1 (one) year.

Implementation of Criminal Sanctions to Sexual Violence with Under Children (Case Study of Child Abuse in Makassar)

g. Correction due to crime

The elucidation of Article 82 paragraph (1) letter c of Law Number 11 of 2012 states that what is meant by "improvement as a result of a crime", for example repairing damage caused by the crime and restoring the situation to the state before the crime occurred.

3. Application of Criminal Sanctions Against Children Who Commit Sexual Crimes

A criminal act is an act that violates the law that is committed either intentionally or unintentionally by someone whose actions can be accounted for and by law have been declared as an act that can be punished. If someone commits a crime, then his actions must be held accountable.

1. Case Chronology

On Tuesday, 02 June 2015 at around 11.00 WITA, the son of Muhajirin alias Aji (15) committed a series of sexual crimes in the form of intercourse with Azura Safwana Rubina alias Azura (10) which took place on Jalan Maccini Pasar Malam Makassar. The incident began when the victim Azura Safwana Rubina alias Azura was playing at Siti's house (perpetrator's sister), then after playing the victim Azura was about to go home and suddenly the perpetrator pulled the victim Azura's hand to the front of the bathroom after that the perpetrator kissed the victim Azura on both cheeks then the perpetrator told The victim "Don't leave the house, if you go out ko nabombeko Siti" then the perpetrator opened the victim's underwear then inserted his genitals into the victim Azura's genitals while rubbing so that the perpetrator released his semen.

Previously, the perpetrator had intercourse with the victim Azura 3 (three) times, namely the first date, May 29 2015 around 11.00 WITA, the second date, May 31 2015 around 11.00 WITA, and the third date June 2 2015 around 11.00 WITA. The perpetrator admitted that he had committed the first and second acts in the room of the perpetrator's mother and the third in the bathroom. After carrying out the action, the perpetrator told the victim to go home and when he got home, the victim complained to his mother who then reported this to the police and took the victim to the doctor for examination and a post mortem. And it's true that after the incident the child experienced pain and became traumatized, frightened when he saw the perpetrator and often cried.

And in the end the judge declared the perpetrator guilty of committing the crime of "deliberately persuading the victim to have intercourse with him"

1. The judge proposes a crime against the child, therefore with imprisonment for 5 (five) years and a fine of Rp. 60,000,000.00 (sixty million rupiah) with the condition that if the fine is not paid it must be replaced with imprisonment for 3 (three) months
2. Determine that the period of arrest and detention that has been served by the child is deducted entirely from the sentence imposed
3. Ordered that the child remains detained
4. Allowing the child to pay court fees of Rp. 2000.00 (two thousand rupiahs)

2. Author's analysis

Based on the case above the Judge's decision is in accordance with the provisions stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System that for children who are legally and convincingly proven to have committed a crime and fulfill all the elements, then against the child can be subject to one of the sanctions as stated in Article 71 of the Law on the Juvenile Criminal Justice System regarding criminal sanctions and imposing a criminal sanction of 5 years imprisonment for the perpetrator in accordance with the provisions of Article 71 paragraph 1 letter e of the SPPA Law.

In submitting criminal sanctions and actions against children, it is prohibited to violate the dignity of the child. Therefore, the role of the judge is very important because the sanctions imposed are expected to improve themselves and create a deterrent effect so that children do not repeat their actions in the future.

IV. CLOSING

1. Conclusions

1. The factors that influence children to commit crimes of sexual violence are the influence of a bad environment, pornographic literature, pornographic pictures, pornographic films and VCDs/DVDs circulating in society. The circulation of pornographic reading books, pictures and films can cause influence and stimulation for those who read and view them as a result of which there are many sexual deviations, especially by children who are teenagers. And
2. The application of criminal sanctions against children who commit acts of sexual violence in this case is in accordance with the provisions of Article 71 paragraph 1 letter e, namely the imposition of criminal sanctions in the form of imprisonment for 5 (five) years.

2. Recommendation

It is hoped that parents will increase their awareness of their children because unforeseen criminal acts often occur due to opportunities. And also parents prioritize children's education so that later the child does not fall into negative things.

Implementation of Criminal Sanctions to Sexual Violence with Under Children (Case Study of Child Abuse in Makassar)

It is hoped that law enforcers will pay attention to the provisions of the rules that apply to defendants who in this case are categorized as children, in imposing sanctions more towards education and character building for children so that threats of imprisonment become the last alternative in imposing sanctioned fish for children.

REFERENCES

LEGISLATIONS

- 1) Kitab Undang-Undang Hukum Pidana.
- 2) Undang-Undang Nomor 3 Tahun 1997 tentang Pengadilan Anak.
- 3) Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.
- 4) Undang-Undang Nomor 34 Tahun 2014 tentang Perlindungan Anak.

BOOKS

- 1) Nandang Sambas, Pembaharuan Sistem Pemidanaan Anak di Indonesia, Graha Ilmu, Yogyakarta.
- 2) Alya Andika, Dari Mana Aku Lahir?, Yogyakarta, Pustaka Grahatama, 2010.
- 3) Michael Gurian, The Wonder Of Boys: Cara Membesar Anak Laki-Laki Menjadi Pria Sejati, Jakarta, Serambi, 1996.
- 4) R. Soesilo, Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal, Bogor, Politeaia, 1996.
- 5) Moeljatno, Asas-Asas Hukum Pidana, Jakarta, Rineka Cipta, 2009.
- 6) Soerjono Soekanto, Penelitian Hukum Normatif, Rajawali Pers, 2006.
- 7) Prof. Dr. Bagong Suyanto, Sosiologi Anak, Prenadamedia Group, Jakarta.
- 8) Peter Mahmud Marzuki, Penelitian Hukum, Kencana Prada Media Group, Jakarta, 2013.
- 9) Arif Gosita, Masalah Perlindungan Anak, Akademika Presindo, Jakarta, 1985.
- 10) Jamal Ma'umur Asmani, Kiat Mengatasi Kenakalan Remaja Di Sekolah, Buku Biru, Yogyakarta, 2012.
- 11) Drs. Sudarsono, Kenakalan Remaja, PT Rineka Cipta, Jakarta, 1995.
- 12) Kartini Kartono, Kenakalan Remaja, Jakarta, RajaGrafindo, 2017.
- 13) Wagiat Soetodjo, Hukum Pidana Anak, Refika Aditama, Bandung, 2010.
- 14) Bambang Waluyo, Penelitian Hukum Dalam Praktek, Sinar Grafika, Jakarta.
- 15) Wahyuni, Sosiologi Anak, Premadamedia Group, Jakarta.

JOURNAL

- 1) M. Iqbal, Perlindungan Hukum Terhadap Korban Tindak Pidana, Agustus, 2011.
- 2) Sandra S. Tangri Martha R Burt dan Leanor B. Johnson, Seksual Harassmentat Work Three Explanatory Models.
- 3) Abdul Wahid dan Muhammad Irfan, Perlindungan Terhadap Korban Kekerasan Seksual Advokasi Asasi Perempuan.

THESIS

- 1) Sutrisno Hadi, Metologi Research I Cetakan XVII, Fakultas Psikologi Universitas Gajah Mada, Yogyakarta.

WEBSITE

- 1) <http://jakarta.tribunnews.com/> diakses pada tanggal 21 Februari 2019, pukul 01.10
- 2) Zulsyid, 22 April 2015, Pengertian Anak Menurut Para Ahli, <https://www.bersosial.com/threads/pengertian-anak-menurut-para-ahli-adalah.21788/> Dikutip Pada Hari Sabtu tanggal 15 September 2018 Pukul 19:58 WIB.
- 3) Tika Amalia, 20 Oktober 2017, Apa Yang Dimaksud Dengan Perlindungan Anak, <https://www.dictio.id/t/apa-yang-dimaksud-dengan-perlindungan-anak/13146> Dikutip Pada Hari Minggu Tangaal 16 September 2018 Pukul 15:14 WIB.



There is an Open Access article, distributed under the term of the Creative Commons Attribution–Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.