

Legal Protection of Children from Sexual Offenses (Law of the Republic of Indonesia Number 35 Year 2014 on Child Protection)

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Abstract

As one form of Tri Dharma Higher Education is the devotion to the masarakat, some lecturers of the Faculty of Law Hasanuddin University led by a team consisting of Wiwie Heryani, A. Tenri Famauri, and Ratnawati, held legal counseling at SMA Negeri 21 Makassar (Monday, October 1, 2017), with the topic "Legal Protection Against Children from Sexual Crimes". This counseling is an effort to implement Law of the Republic of Indonesia Number 35 Year 2014 on Child Protection. According to the extension team from the Faculty of Law Hasanuddin University, sexual crimes is one form of crime that increasingly widespread both the motive, nature, form, intensity, and ways causing unrest in the community. The recent rise of sex crimes is common in children, whether physical, psychological, sexual or neglectful, often of children and children without adequate legal and human rights protections so that children often become victims. Sexual crimes committed against children will certainly have an impact on the development of psychological and other development of the child. Psychological impact on the child will give birth to a prolonged trauma which can then give birth to unhealthy attitudes, such as minder, excessive fear that can certainly interfere with the development of the child's psyche. By the Indonesian government through agencies or agencies and law enforcement officers are expected to be able to make preventive and repressive efforts in the form of real law enforcement in accordance with the rules of law applicable so that the order of life of society and nation safe and orderly can be achieved, the core of legal counseling from this Faculty of Law Hasanuddin University Lecturer.

Keywords: Legal Protection, Children, Sexual Offenses

I. Introduction

Children are part of the community, they have rights like other people to be protected and respected. Any State anywhere in the world is obliged to give adequate attention and protection to the rights of the child, which include civil, economic, social and cultural rights. The right of the child can be seen in Article 28 B Paragraph (2) of 1945 of the Republic of Indonesia Constitution which regulates "every child has the right to survival, growth and development and is entitled to protection and violence and discrimination".

However, it seems that the status and rights of the children when viewed from a juridical perspective have not received serious attention either by the government, law enforcers or the public in general and are still far from what should be given to them. This condition is compounded by the weak implementation of the law on the rights of the child committed by law enforcement officers themselves.

Violent crime is one form of crime in society whose development is increasingly diverse both the motive, the nature, the form, the intensity and the modus operandi. As a social reality, this criminal problem cannot be avoided and is always there, causing anxiety because criminality is regarded as a disturbance to the welfare of society.

The recent rise in violence to children, whether physical, psychological or sexual violence, does not receive adequate legal and human rights protections so that children are repeatedly victimized.

Abetting is one of the sexual crimes that result from changes occurring within the structure of society. Sexual assault is a type of crime that has an especially bad impact on the victim, since sexual offenses against children are a violation of human rights that can damage the dignity of humanity, especially the soul, the mind and the descendants. Cases of sexual crimes are now happening in Indonesia, and the victims are often children.

Throughout the year 2014-2015 cases that occurred in the legal district of Makassar, which related to sexual violence against children amounted to 120 cases, from the data shows that the level of crime rating to children is very alarming and increasingly (Charisma Bill Brintton Simatupang, 2015).

Sexual crimes committed against children will certainly have an impact on the development of psychological and other developments of the child. The psychological impact on the child will give birth to a prolonged trauma which can then give birth to unhealthy attitudes, such as minder, excessive fear, disrupted mental development, and ultimately result in mental retardation.

Law of the Republic of Indonesia Number 23 Year 2002 on Child Protection (as amended by Law of the Republic of Indonesia Number 35 Year 2014 on Amendment to Law of the Republic of Indonesia Number 23 Year 2002 on Child Protection, effective on October 18, 2014), sets forth the purpose of child protection in Article 3:

“Child protection aims to ensure the fulfillment of children's rights in order to live, grow, develop, and participate optimally in accordance with the dignity and dignity of humanity, and get protection from violence and discrimination, for the realization of quality Indonesian children, good attitude and prosperous”.

Given the complex nature of legal issues including the prevalence of crime or crime that continues to occur along with the development of the era, science and technology, the Indonesian government through agencies and or agencies and law enforcement officials (police, prosecutors and courts and prisons) are expected to be able real and enforceable law enforcement efforts in accordance with applicable law rules for a safe and orderly society and nation order to be achieved as much as possible. Such an effort is not a simple and rapid process as imagined, because it involves so many factors influencing it. Based on the exposure, then the issues to be discussed in this paper is what are the factors that cause increased sexual crimes against children? and how is the legal effort to tackle sexual crimes against children?

II. Literature Review

A. Definition of Crime

Crime is an act contrary to the Law. According to A.S. Alam (2010:16), in terms of sociological, then the meaning of crime is an act or behavior that in addition to harming the sufferer, as well:

- a. Such losses should be prohibited by law, should be clearly stated in criminal law;
- b. There must be real or perceived consequences or losses;
- c. There must be an act or attitude of allowing something deliberate or reckless action that causes adverse consequences;
- d. There must be malice (*mens rea*);
- e. There must be a relationship of the unity or correspondence of an equation between a malice and an action;
- f. There must be a cause and effect relationship between a loss that is prohibited by law by a deliberate act of self-interest;
- g. There must be a penalty stipulated by law.

There are four approaches still taken today to explain the background of the occurrence of crime, that is:

1. Biogenic approach, an approach that tries to explain the cause or source of crime based on biological factors and processes;
2. The psychogenic approach, which emphasizes that lawbreakers respond to various psychological pressures and personality problems that drive them to commit crimes;
3. The sociogenic approach, which explains crime in relation to social processes and structures existing within society or that are specifically linked to elements within the cultural system.
4. A typological approach, based on the preparation of the typology of criminals in relation to the social role of offenders, the degree of identification with evil, self-conception, the pattern of communion with others who are criminals or non-criminals, the continuity and enhancement of the quality of crime, with the elements of personality and the extent to which evil is part of one's life.

On the other hand, crime is not much different from violence, according to Johan Galtung (Novri Susan:111), divided into three violent demands, namely structural violence, direct violence, and cultural violence. Sexual violence included in the category of direct violence is a form of violence committed directly against those who want to be injured or injured. This form of violence tends to follow-up actions, such as intentionally harming people, killing others, persecuting and committing sexual violence.

B. Children as Victims of Crime

Child protection is all efforts undertaken to create conditions for each child to exercise his/her rights and obligations for the proper development and growth of the child, physically, mentally, and socially. Article 1 point 2, Law of the Republic of Indonesia Number 23 Year 2002 on Child Protection, provides that child protection is all activities to guarantee and protect children and their rights in order to live, grow, develop and participate optimally in accordance with the dignity and dignity of humanity, as well as protection from violence and discrimination.

A child victim of a criminal offense is entitled to rehabilitation from the government, both physically and mentally, spiritually and socially, in addition to his privacy both for protection, his good name is maintained and preserved, his safety as well as victim witness becomes the responsibility of the government and the case he faces, and vice versa against a child who is a criminal offender.

Lack of public understanding about the anticipation to avoid sexual crimes and the process of solving sexual crimes by revealing the cases they face because in the community's understanding it includes family disgrace (*siri*) that must be covered. With the socialization of the Child Protection Act it is expected that the victim to report his case may break the link of sexual crimes and will not be repeated in other children.

C. Sexual Crimes Against Children

In the Criminal Code (KUHP) does not mention explicitly sexual crimes, but only regulates the crimes against decency. Juridically, the criminal offenses under the current Criminal Code consist of two (2) criminal groups, namely “moral crimes” (set out in Chapter XIV Book II Articles 281-303) and “moral violations” (set out Chapter IV Book III Articles 532-547).

The Criminal Code, regulating the crime of morality in Chapter XIV Book II is generally divided into 2:

1. Crime against decency related to sex and;
2. Crime against decency are not related to sex include the courtesies.

Related to the discussion of legal counseling on crime against decency related to sex. Crimes against children can be understood as a form of crime that positions children as victims or sex objects.

In addition to viewing the provisions governing the criminal offenses in the Criminal Code, the author also tries to look at the provisions related to crime of morality contained in Law of the Republic of Indonesia Number 23 Year 2002 on Child Protection, in particular Articles 81 and 82, this is due after the enactment of Law of the Republic of Indonesia Number 23 Year 2002 on Child protection, then in the case of child protection especially the crime of morality against the child refers to this law. This refers to the principle of *Lex Specialis Derogat Lege Generalis*, which means that special rules or laws take precedence over their validity rather than general rules.

In terms of forms of action as in the provisions of Law of the Republic of Indonesia Number 23 Year 2002 only consists of 2 namely intercourse and lewd acts. In addition to Law of the Republic of Indonesia Number 23 Year 2002, there has been a change in the law with the establishment of Law of the Republic of Indonesia Number 35 Year 2014. Therein there are some changes related to criminal sanctions and penalties.

Law of the Republic of Indonesia Number 35 Year 2014 relating to criminal morality places an act prohibited in Article 76 D and Article 76 E and then its criminal threat on Article 81 and Article 82.

III. Method

Legal education methods are conducted directly and indirectly. Directly, by way of face-to-face interactive among extension lecturers of Law Faculty of Hasanuddin University and who was counseled by SMA Negeri 21 Makassar students, among others through lecture activities of integrated legal counseling, and legal consultation on socialization of Legal Protection of Children from Sexual Offenses", as an effort to implement Law Number 35 Year 2014 on Child Protection. The indirect legal counseling method, conducted through print media in the form of distribution of pamphlets and pocket books.

The expected outcomes of this legal counseling receive adequate legal and human rights protections so that children are often victimized, with legal counseling being a preventive set up in child sex offenses.

IV. Discussion

A. Factors Causing Sexual Crime in Children

The causes of sexual crimes in children are caused by economic factors, religion, education and lack of supervision of children, in addition, the factor of technological progress is also a support that needs to be considered.

1. Economic Factors, is one of the causes of the occurrence of sexual crimes against children, most of those who are not able and categorized in people who have lower standard of living or poor have more priority to do deviant behavior in sexual act one of them is action of pedophilia.
2. Low educational factors make an individual more likely to engage in deviant sexual behavior because they are more concerned with satisfying their sexual desires than by obeying norms and values in social life;
3. Supervision of the child of the parent should be very concerned in our lives. A child still does not understand about the relationship of sexual intercourse because he is immature to understand it. This is what makes a sexual offender take the opportunity in doing the action. An innocent child is very easily tricked by either using the lure or reward offered to meet the sexual needs of the offender. A child should be considered in the development process so that a child follows the mental and physical development of the child in general, which is why parents have an important and very responsible role in protecting children from the behavior of pedophilia and other sexual crimes that threaten the child's surroundings;
4. Advances in technology also have an influence on the nature of the perpetrators of sexual, communication sophistication such as internet for example, in addition to having a positive impact of internet influence also has a very negative impact, from the internet an individual can access porn sites freely. Great curiosity and increased uninterrupted power of excitability cause an individual to try to practice one of them by committing a sexual crime to a child to meet his sexual needs;
5. Weak religious factors also make a sex offender commit a crime. The perpetrator does not have a strong psychological backdrop, and a sufficient religious understanding of the prohibition of sexual deviation

let alone performing acts that tyrannize others, weak religious faith makes an individual away from God.

B. Legal Efforts in Tackling Sexual Crimes Against Children

Sexual offenses against children is an act that disturbs society and is not desired by human beings as individuals who desire peace and tranquility in community life, therefore must be held as early as possible before the impact is widespread.

Crime-prevention efforts exist and continue to be done by all parties, both government and citizens, because everyone is looking for a peaceful and peaceful society. Recognizing the seriousness of a crime, it directly or indirectly encourages the transformation of reacting to crime and criminals.

This is essentially related to the purpose and purpose of the crime prevention efforts. Community's reaction to crime can be formally formalized as the creation of a criminal justice system, but can also be informally informal, among others, as community participation in prevention.

1. Preventive Efforts

Preventive efforts are a crime prevention effort with an emphasis on prevention before the crime occurs.

Crime can be reduced by eliminating the factors that cause crime, in this case prevention efforts are preferred. With prevention efforts can strengthen harmony and increase the sense of responsibility towards fellow members of the community. Especially the crime of morality against children, by providing protection to children is the most easily persuaded, other than that children often do not have the power to fight like adults.

Handling is not only enough on downstream issues by handing over to the police, upstream prevention programs are also very important such as socialization, counseling and strengthening family resilience.

Based on the results of the study, the authors found that preventive efforts to combat sexual crimes in Makassar were implemented by the Integrated Service Center for Women and Children Empowerment (P2TP2A) as a leading sector, as well as Child Protection Institution (LPA) of Makassar and several Legal Aid Institutions (LBH), one of which is LBH Apik as a partner.

In the aspect of prevention must be done periodically in the long term, because often people become forget the things that have been socialized, therefore need patience in understanding.

Equally important in the prevention of sexual crimes in children is working with partners of the Legal Aid Institute and Child Protection Institutions, in the form of informal coordination, because sometimes there are victims who report to the two institutions but do not want to involve the police, by LBH APIK conduct awareness to the victim in order to open themselves in solving the problem that is by way of assistance for victim because sometimes a victim does not realize that he has become victim of sexual crime.

2. Repressive Efforts

Basically, sexual crimes or lewd acts are often done in several ways:

1. Rape or sexual assault;
2. Showing genitals, touching or sexually self-rubbing, in the presence of others;
3. Swiping the genitals to other people's bodies;
4. Giving massage on the neck that is tempting or sexual;
5. Feel the child's body while the child is sleeping;
6. Hug, kiss, pat and stimulate.

Often a lewd act is physically a prelude or the beginning of intercourse, after a lewd act then the offender ends his act with intercourse.

As a repressive effort is the handling done after the occurrence of criminal acts in the form of law enforcement by dropping the law as stipulated in the Law on Child Protection.

In the implementation of efforts to overcome sexual crimes, especially in repressive law enforcement, is not as easy as turning the palm of the hand, considering other problems affecting law enforcement process, according to Soerjono Soekanto (2004:42-43), among others related to several factors:

1. The legal factor itself or the regulation itself. For example, the principles of the enactment of a law, the absence of regulations that govern the execution that is urgently required to apply the law, as well as the vagueness of the meaning of words in the law that result in misunderstandings in interpreting and applying the law;
2. Law enforcement factors. One of the keys to success in law enforcement is the mentality or personality of its own law enforcers. In the framework of law enforcement, justice and truth must be declared, felt, seen and can be actualized;
3. Facilities factor. Supportive facilities, including well-educated and skilled manpower, good organization, adequate equipment, sufficient finance. Without adequate infrastructure or facilities, law enforcement is unlikely to perform the role properly;
4. Community factors. Communities have a strong influence on the implementation of law enforcement, because law enforcement comes from the community and aims to be run by the community. The most important part of law enforcement is public awareness. The higher the legal awareness of the community, the more likely it will be to enable good law enforcement, the lower

- the level of public legal awareness, the more difficult it will be to implement good law enforcement;
5. Cultural factors. Indonesian culture is the basis of the application of customary law. The enactment of a written law (legislation) should reflect the values on which the customary law is based. In law enforcement, the more adaptation between legislation and community culture, the easier it will be in enforcement. Where legislation is incompatible or contradictory to the culture of the community, it becomes increasingly difficult to enforce and enforce the rule of law.

V. Conclusion

1. Factors that cause sexual crimes in children include: economic factors, because people who cannot afford or people who are categorized are people who have a bottom of life or poor who have more priority to perform deviant behavior; low educational factors cause the behavior of sexual crimes tend to deviant behavior because it is more concerned with the satisfaction of sexual desire than to obey the rules or norms that live in society; the low supervision of the child by the parents so that the child can easily be deceived by the perpetrator of the sexual crime; advances in technology where sex offenders easily access porn sites and low faith and understanding of religion keeps the perpetrators away from the teachings of their religion.
2. Prevention efforts against sexual crimes is by two (2) means of preventive and repressive efforts. Preventive efforts by emphasizing the prevention aspects before the crime occurs, whereas repressive efforts are the handling efforts conducted after the crime of sexual crimes that is by law enforcement by imposing the punishment as stipulated in the Law on Child Protection.

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