

APPLICATION OF CRIMINAL LAW AGAINST PERPETRATORS OF SEXUAL VIOLENCE IN CHILDREN

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Abstract:

Children are the nation's assets and the next generation's state. Every child has the same human rights as humans in general, as is constantly reported in the mass media about cases of child sexual abuse that need to get an important spotlight for the law to act as soon as possible. Criminal penalties for perpetrators of sexual violence as stated in the Criminal Code and the Child Protection Act are considered ineffective, so the Government passed PERPU No. 1/2016 into UU 17/2016, which applies punishment for perpetrators of sexual violence crimes, including by chemically imposing castration. Arrangements on child sexual intercourse are also regulated in Child Protection Act No.35 of 2014. About the criminal acts of sexual violence against children in articles 76D, 76E and in KUHP, several articles protect children against sexual violence; protection of children is indicated by the provision of criminal punishments for perpetrators. Sexual violence crimes in Indonesia are increasing every year.

Keywords: Children's, Criminal Law, Sexual Violence

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INTRODUCTION

Children are assets of the nation and society, which are the next generation who have future aspirations and hopes for nation-building. Moreover, children are part of the younger generation as one of the human resources, which are the potential and successors of the ideals of the nation's struggle, which have a strategic role and special characteristics. Therefore, it is fitting that children must get protection from their parents, family, community and state. Indonesia even has a Child Protection Law and various other rules related to child protection issues which have articles that normatively guarantee efforts to fulfill children's rights. However, some children in Indonesia are still not protected due to the increasing number of perpetrators of sexual violence crimes. Sexual violence crimes in Indonesia are increasing every year.

Children are vulnerable to becoming victims of sexual violence because of their high level of dependence. At the same time, the ability to protect oneself is limited. Various factors cause cases of sexual violence against children, and the impact children feel like victims, both physically, psychologically and socially. Trauma to children who experience sexual violence they will experience for the rest of their lives. Physical wounds may heal, but those stored in mind do not necessarily disappear easily. It should be a concern because of the children. Therefore, children need to be equipped with the correct knowledge of sexuality to avoid sexual violence. These crimes and sexual violence, especially the crime of sexual abuse against minors, have made various efforts to eradicate this crime from countries globally, but these efforts have only succeeded in reducing its intensity and quality. And the perpetrators are usually people who know closely or live close to the victim, such as neighbors, friends, biological fathers, stepfathers, grandfathers, uncles and brothers themselves. They have shallow knowledge (Ismantoro Dwi Yuwono, 2006).

In Indonesia, cases of sexual violence have increased every year. The victims are not only adults, but now they have spread to teenagers, children and even toddlers. The phenomenon of sexual violence against children is increasingly common and has become global in almost all countries. Cases of sexual violence against children continue to increase from time to time. The increase is not only in terms of quantity or number of cases, but also in terms of quality. And what is even more tragic is that most of the perpetrators are from the family environment or the environment around the child, including in their own homes, schools, educational institutions, and

the child's social environment. Sexual violence against children has violated immoral norms, religious norms, and legal norms. Abdul Wahid and Muhammad Irfan view that sexual violence is a term that refers to deviate sexual behavior or deviant sexual relationships.

Criminal penalties for perpetrators of sexual violence as stated in the Criminal Code and the Law on Child Protection. Protection against sexual violence against children is also carried out by taking preventive measures, not only punishing the perpetrator and then it can be considered to provide justice to the victim but also needs to provide an understanding of how sexual harassment actually is to prevent children from becoming victims of sexual abuse, including family environment, School Environment, Government. The main issue is how to regulate the law on the crime of sexual violence against children in Indonesia in terms of Law No. 35 of 2014 concerning Child Protection, applying criminal sanctions against crimes of sexual violence against children according to law no. 35 of the year. 2014 concerning Child Protection and Law Number 17 of 2016.

Understanding the Child

According to the Big Indonesian Dictionary, what is meant by language is a second descendant of a human who is still small. Furthermore, what is meant by the child in the United Nations Convention on the Rights of the Child (Convention on the Right of the Child) is that a child means every human being under the age of 18 (eighteen) years, except according to the law that applies to a child whose maturity was reached earlier. The formulation of the definition of children is very diverse in various laws. This understanding does not provide a child's conception, but the formulation is only limited. But even so, before elaborating the meaning of children according to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System.

In Indonesia itself, there are several definitions of children according to laws and regulations; these arrangements can be seen as follows :

1. According to Article 1 paragraph (1) of Law no. 23 of 2002 concerning Child Protection, "Child is a person who is not yet 18 (eighteen) years old, including children who are still in the womb"
2. According to article 45 of the Criminal Code (KUHP), "Child is someone whose age has not reached 16 (sixteen) years".
3. According to Article 1 point 2 of Law No. 4 of 1979 concerning Child Welfare, "Child is someone whose age has not reached the age of 21 (twenty-one) years and has never been married."
4. Menurut According to Article 1 paragraph (3) of the SPPA Law, "Children are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime."

The limit of someone who is called a child is about the age limit. What is meant by the age limit of a child is the grouping of the maximum age limit as a manifestation of the child's ability in legal status, so that the child switches status into a legal subject who can be independently responsible for the actions and legal actions taken by the child or in other words others are called adults. In Indonesian criminal law, the definition of a child is placed in a negative legal interpretation. Children as legal subjects must be responsible for the crimes they commit. Because his status is underage, causing him to have special rights, the normalization process of his deviant behavior continues to ensure that the child has the right to proper welfare and a brighter future.

Understanding Sexual Violence

The term sexual violence comes from English sexual hardness; in English, the word hardness means violence, unpleasant, and not free. Violence itself consists of two words, namely "vis," which means (power, strength) and "latus" means (to bring), which is then translated as bringing strength. The Big Indonesian Dictionary provides an understanding of violence in a narrow sense, which only includes physical violence. According to the KBBI, violence is an act that can cause injury or death to another person or cause physical damage to other people's property. The word sexual cannot be

separated from sex and sexuality. Sex is the biological difference between women and men or what is often referred to as gender. Meanwhile, sexuality involves various broad dimensions, namely the biological, social, psychological, and cultural dimensions.

Sexual violence is any act of assault of a sexual nature, whether physical or non-physical, regardless of whether there is a personal relationship between the perpetrator and the victim. Sexual violence is an act either in the form of words or actions by someone to control and involve others in sexual activities that the other person does not desire. There are two important elements in sexual violence, namely the element of coercion or the absence of consent from other parties, and the element of the victim being unable or unable to give consent, for example, sexual violence against children. According to the RUU PKS, sexual violence is every act of humiliating, insulting, attacking, and other actions against a person's body, sexual desires, and reproductive function, by force, against someone's will, which causes that person to be unable to give consent. in a state of freedom, due to unequal power relations and gender relations, which result in or can result in physical, psychological, sexual suffering or misery, economic, social, cultural, and political loss.

Sexual Violence in Children

The definition of violence against children in terms is closely related to the word abuse, which is a word that is usually translated into violence, mistreatment, torture, or mistreatment. This word is defined as "improper behavior intended to cause physical, psychological, or financial harm to an individual or group." Child abuse is a term commonly used to refer to violence against children. Sexual violence against children involves children in sexual activities that they do not understand, such as indecent treatment from other people, activities that lead to pornography, pornographic words, obscene acts and sexual intercourse with children carried out by other people without responsibility. encouraging or forcing children to engage in unlawful sexual activities such as being involved in prostitution

The forms of sexual violence against children are divided into three categories as follows:

1. Rape:
Rape usually occurs at a time when the perpetrator (usually) first threatens by showing his power to the child.
2. Incest :
Sexual intercourse or other sexual activity between individuals who are related to each other, where marriage between them is prohibited by law or culture.
3. Exploitation:
Sexual exploitation includes prostitution and pornography. It is quite unique because it often involves a group participating. It can occur as a family or outside the home with several adults, unrelated to children, and constitutes a sexual environment.

Characteristics and Understanding of Criminal Law

Until now, there is no definite legal meaning. Or in other words, there is no legal understanding that is used as a standard in understanding the meaning and concept of law. Notohamidjojo defines law as a written and unwritten regulation that is usually coercive, for human behavior in state-society (as well as between countries), which leads to justice, for the realization of a peaceful order, intending to humanize humans in society. W.L.G Lemaire explains that criminal law consists of norms that contain requirements and prohibitions which (by the legislators) have been associated with a sanction in the form of punishment, namely a special suffering. Thus, criminal law is a system of norms that determine which actions (things to do or not to do something where there is a necessity to do something) and under what circumstances can be imposed on a person those actions.

Thus, criminal law is defined as a legal provision/law that determines what actions are prohibited/abstained from and the threat of sanctions for violating the prohibition. Many experts argue that criminal law occupies a separate place in the legal system, this is because criminal law does not place its own norms, but strengthens norms in other fields of law by stipulating the threat

of sanctions for violations of norms in other fields of law. The above understanding follows the principles of criminal law contained in Article 1 paragraph 1 of the Criminal Code, where criminal law is based on written regulations (laws in a broad sense), also known as the principle of legality.

The characteristic of law is coercion accompanied by threats and sanctions. But the law is not forced to justify wrong matters, or compel those who are incapable and unbearable. In order for the rules of social life to be truly obeyed and obeyed so that they become legal rules, the social regulations must be equipped with an element of coercion. Thus, the law has the nature of regulating and forcing everyone to obey the rules in society and provide strict sanctions (in the form of punishment) to anyone who does not want to obey it. The purpose of criminal law is to protect the interests of individuals or human rights and society. The purpose of criminal law in Indonesia must be to follow the Pancasila philosophy, which can bring fair interests to all citizens. Thus the criminal law in Indonesia is to protect all Indonesian people. The purpose of criminal law is divided into 2 (two), namely :

1. The purpose of criminal law is Sanction law.
This goal is conceptual or philosophical and aims to provide the basis for criminal sanctions. Types of forms and criminal sanctions and parameters in resolving criminal violations. This purpose is usually not written in criminal law articles but can be read from all criminal law provisions or general explanations.
2. The purpose of imposing criminal sanctions on people who violate criminal law. This objective is pragmatic with clear and concrete measures that are relevant to the problems that arise as a result of violations of criminal law and people who violate criminal law. This goal is the embodiment of the first goal.

The following also mentions some of the opinions expressed by Sudarto, that the functions of criminal law can be distinguished as follows:

1. Common functions
Criminal law is one part of the law, therefore the function of criminal law is also the same as the function of law in general, namely to regulate social life or to organize governance in society.
2. Special function
The special function of criminal law is to protect legal interests against acts that want to rape him (*rechtsguterschutz*) with sanctions in the form of criminal sanctions that are sharper in nature when compared to sanctions contained in other branches of law. In the criminal sanction, there is a tragic (a sad thing) so that the criminal law is said to be "slicing one's own flesh" or as a "double-edged sword", which means that the criminal law aims to protect legal interests (for example: life, property, independence, honor), but if there is a violation of the prohibition and the order, it will inflict injury (hurt) on the legal interest (object) of the violator. Therefore, it can be said that the criminal law provides rules for dealing with evil acts. In this case, it should also be remembered that as a means of social control, the function of criminal law is subsidiary, meaning that criminal law should only be implemented (used) if other efforts are inadequate.

METHODS

Research on legal protection efforts against child victims of sexual violence is studied according to Indonesian criminal law, as one of the efforts to prevent the existence of criminal acts of sexual violence is legal research using a sociological juridical approach.

RESULT AND DISCUSSION

Handling Sexual Violence Against Children

The form of violence against children is physical violence, such as murder, abuse, or sexual violence, and non-physical violence, such as economic, psychological, and religious violence.

Violence against children can occur anywhere and anytime, whether at the home, playground or even at school. A school is a place where a child receives moral, ethical and academic education. However, in reality, several schools in Indonesia have sexual violence against children. The following is data from the Indonesian Child Protection Commission (KPAI) for children who are victims of sexual crimes through online or in-person media. Handling sexual violence against children needs to be a synergy between families, communities, and the state. Sexual Violence Against Children, in handling cases of sexual violence against children, should be holistic and integrated. All sides need improvement and handling, both from the medical side, the individual side, the legal aspect (in this case, there are still many weaknesses), and social support. One of them is the role of parents. Parents play an important role in protecting children from threats of sexual violence.

Parents must be really sensitive if they see unusual signals from their children. However, not all victims of sexual violence will show easily recognizable signs, especially if the perpetrator takes a persuasive approach and convinces the victim that what happened between the perpetrator and the victim is normal. Parents (not perpetrators of violence) are very helpful in the adjustment and recovery process for children after the sexual violence incident. After an incident of sexual violence that has occurred, parents need the opportunity to deal with their feelings about what happened and adjust to the major changes that have occurred. In addition, parents need to regain confidence and feelings to be able to control the existing situation. The recovery process of parents is closely related to parents' resilience as individuals and the resilience of the family.

Legal Arrangements for Sexual Violence Against Children in Indonesia in terms of Law No. 35 of 2014 concerning Child Protection

Sexual harassment of children is not only regulated in the Criminal Code but is also regulated in more specific regulations, namely Law Number 35 of 2014 concerning Child Protection in Articles 81 and 82, which states that, punishment for perpetrators of sexual crimes against children a minimum of 5 years and a maximum of 15 years in prison and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah, while other penalties according to the Criminal Code articles 287 and 292 states that the maximum sentence for perpetrators of sexual abuse of children is 9 years (Article 287) and a maximum of 5 years (Article 292). the law on child protection as a lex specialist poses a greater threat than that regulated in the Criminal Code. The provisions are contained in Article 80 paragraphs (1), (2), and (3), as mentioned below. Anyone who violates the provisions as referred to in Article 76C, which reads :

- 1) Everyone is prohibited from placing, allowing, committing, ordering to do, or participating in committing violence against children. Sentenced to a maximum imprisonment of 3 (three) years, 6 (six) months and a maximum fine of Rp. 72,000,000.00 (seventy-two million rupiah).
- 2) As mentioned in paragraph (1), if the child is seriously injured, the perpetrator shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiahs).
- 3) As referred to in paragraph (2), if the child dies, the perpetrator shall be sentenced to a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah).

In Article 80 paragraph (4) of Law no. 35 of 2014 concerning Child Protection also specifically stipulates that it is not criminal to abuse children in the family accompanied by criminal sanctions, namely: Criminal plus 1/3 (one third) of the provisions as referred to in paragraph (1), paragraph (2), and paragraph (3) if the perpetrators of the abuse are their parents. The obligations and responsibilities of the state and government for implementing child protection are affirmed in Articles 21 to 25 of Law no. 35 of 2014 concerning Child Protection, which includes obligations and responsibilities. The form of child protection provided by the Child Protection Act and the Law on the Elimination of Domestic Violence and the Child Criminal Justice System is the adoption, compilation, or reformulation of the forms of child protection that have been regulated in the

Criminal Code. Although several articles in the Criminal Code protect children against sexual violence, protection of children is indicated by giving criminal penalties (sanctions) for perpetrators.

Furthermore, in Article 33 of Law no. 35 of 2014 concerning Child Protection also regulates the revocation of custody rights for parents who commit crimes of violence against children in the family, namely:

- 1) Suppose the Parents and the Child's Family cannot carry out the obligations and responsibilities as referred to in Article 26. In that case, a person or legal entity that meets the requirements may be appointed as the guardian of the child concerned.
- 2) As referred to in paragraph (1), becoming the child's guardian is carried out through a court order.
- 3) As referred to in paragraph (2), the appointed guardian must have similarities with the religion adopted by the Child.
- 4) As referred to in paragraph (2), the guardian is responsible for the child and is obliged to manage the property of the child concerned for the best interest of the child.
- 5) Further provisions regarding the terms and procedures for appointing a Guardian as mentioned in paragraph (1) shall be regulated by a Government Regulation.

If the judge imposes an additional penalty of revocation of child custody against parents as perpetrators of criminal acts of violence against children in the family, the judge must also determine the time limit or duration of revocation of child custody; in other words, parents have the right to regain child custody through a court order.

Criminal Sanctions for Perpetrators of Sexual Violence Against Children Based on Law Number 17 the Year 2016

The problem of humans has always attracted attention as a separate problematic group. According to Martin Buber in his book *Das Problem des Menschen*, that humans become a problem because of socio-cultural factors. Changes in social life that negate a sense of security, the technical world that dominates humans, the economic world that shows the balance of production and consumption, disturbs humans. As a social reality, the problem of crime is unavoidable and has always existed, causing unrest because crime is considered a disturbance to the welfare of society and the environment. Violence, harassment, and sexual exploitation, which is a form of violent crime, afflicts adult women and underage women (children).

Sexual violence crimes in Indonesia have increased every year. Criminal penalties for perpetrators of sexual violence, as stated in the Criminal Code and the Law on Child Protection, are considered ineffective, so the Government ratified PERPU No. 1/2016 into Law 17/2016, which imposes heavier penalties for perpetrators of sexual violence crimes, including by imposing chemical castration. The enactment of Law no. 17 of 2016, which began with the issuance of PERPU No. 1 of 2016, is motivated by the significant increase in the number of sexual violence against children, and it is feared that it will endanger the lives and development of children, besides that it also disrupts public security and order.

Criminal sanctions imposed for perpetrators of sexual violence against children have not provided a deterrent effect and prevent sexual violence against children. Therefore, the changes made in Law No. 17 of 2016 are as follows: Provisions of Article 81:

- 1) Anyone who violates the provisions referred to in Article 76D shall be sentenced to a minimum imprisonment of 5 (five) years, a maximum of 15 (fifteen) years, and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).
- 2) Anyone who violates the provisions referred to in Article 76D shall be sentenced to a minimum imprisonment of 5 (five) years, a maximum of 15 (fifteen) years, and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).
- 3) Suppose parents commit the criminal act as referred to in paragraph (1). In that case, guardians, people who have family relationships, child caretakers, educators, education

staff, officers who handle child protection, or it is committed by more than one person together - the same; the penalty is added 1/3 (one third) of the criminal threat as referred to in paragraph (1).

- 4) In addition to the perpetrators as referred to in paragraph (3), the addition of 1/3 (one-third) of the criminal threat is also imposed on perpetrators who have been convicted of committing a crime as referred to in Article 76D.
- 5) 5) If the criminal act as referred to in Article 76D causes more than 1 (one) victim, causes serious injury, mental disorder, infectious disease, is disturbed or lost reproductive function, and the victim dies, the perpetrator is sentenced to death for life. , or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.
- 6) In addition to being subject to the punishment as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional punishment in the form of announcing the identity of the perpetrator.
- 7) As referred to in paragraphs (4) and (5), the perpetrators may be subject to action in the form of chemical castration and installation of electronic detection devices.
- 8) As referred to in paragraph (7), the action is decided together with the main punishment by specifying the period for the implementation of the action.
- 9) Additional penalties and excluded actions for child perpetrators.

Article 81A :

- 1) As referred to in Article 81 paragraph (7), the action is imposed for a maximum period of 2 (two) years and is carried out after the convict has served the principal sentence.
- 2) The implementation of the actions as referred to in paragraph (1) is under regular supervision by the ministry in charge of government affairs in the legal field, the ministry in charge of government affairs in the social sector, and the ministry in charge of government affairs in the health sector.
- 3) The implementation of chemical castration is accompanied by rehabilitation.
- 4) A Government Regulation shall regulate further provisions regarding the procedure for implementing the action and rehabilitation.

Article 82:

- 1) Anyone who violates the provisions as referred to in Article 76E shall be sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years, and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).
- 2) Suppose parents commit the criminal act as referred to in paragraph (1). In that case, guardians, people who have family relationships, child caretakers, educators, education staff, officers who handle child protection, or it is carried out by more than one person together; the penalty is added by 1/3 (one third) of the criminal threat as referred to in paragraph (1).
- 3) In addition to the perpetrators as referred to in paragraph (2), the addition of 1/3 (one-third) of the criminal threats is also imposed on the perpetrators who have been convicted of committing a crime as referred to in Article 76E.
- 4) If the criminal act as referred to in Article 76E causes more than 1 (one) victim, causes serious injury, mental disorder, infectious disease, reproductive function is disturbed or lost, and the victim dies, the penalty is increased by 1/3 (one third) of the criminal penalty as referred to in paragraph (1).
- 5) In addition to being subject to the punishment as referred to in paragraph (1) to paragraph (4), the perpetrator may be subject to additional punishment in the form of announcing the perpetrator's identity.
- 6) As referred to in paragraphs (2) to (4), the perpetrators may be subject to action in the form of rehabilitation and installation of electronic detection devices.

- 7) The action as referred to in paragraph (6) shall be decided together with the principal punishment by specifying the period of execution of the action.
- 8) Additional penalties are excluded for child perpetrators.

Article 82A:

- 1) The actions as referred to in Article 82 paragraph (6) are carried out during and after the convict has served the principal sentence.
- 2) The implementation of the actions as referred to in paragraph (1) is under regular supervision by the ministry in charge of government affairs in the legal field, the ministry in charge of government affairs in the social sector, and the ministry in charge of government affairs in the health sector.
- 3) A Government Regulation shall regulate further provisions regarding the procedure for implementing the action.

The stipulation of this law is considered very important because the situation is urgent; it is forced and urgent because sexual crimes against children are already included in the category of extraordinary crimes or called Extra-Ordinary Crimes. Therefore, castration is one of the punishments that can provide a deterrent effect. Seeing the victim's perspective, the victim could not defend himself because he was still a minor. The weighting penalty exists because the Child Protection Law and the Criminal Code are insufficient to provide fair legal sanctions for victims. The condition of children in Indonesia requires the help of all parties and requires additional punishment to eradicate this extraordinary crime.

CONCLUSION

Sexual violence against children is when someone uses a child to get sexual pleasure or satisfaction. It is not limited to having sex only, but also acts that lead to sexual activity against children, such as touching the child's body sexually, whether the child is wearing clothes or not; all forms of sexual penetration, including penetration into the child's mouth using objects or body parts; make or compel a child to engage in sexual activity; intentionally engaging in sexual activity in the presence of children, or not protecting and preventing children from witnessing sexual activities carried out by others; create, distribute and display images or films containing scenes of children in indecent poses or acts; and showing children, pictures, photos or films that show sexual activity. In addition, it has a negative impact on both physically and psychologically.

Regulations regarding sexual intercourse with children are regulated in the Child Protection Law Number 35 of 2014. Regarding the crime of sexual violence against children in articles 76D, 76E and in the KHUP, several articles protect children against sexual violence; protection of children is indicated by the provision of criminal penalties (sanctions) for the perpetrators. Sexual violence crimes in Indonesia have increased every year. Criminal penalties for perpetrators of sexual violence, as stated in the Criminal Code and the Child Protection Act, are considered ineffective, so the Government ratified PERPU No. 1/2016 into Law 17/2016, which imposes heavier penalties for perpetrators of sexual violence crimes, including by imposing chemical castration.

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