

The Application of Criminal Sanctions for Perpretrators of Sexual Violence Against Children with Disabilities

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ABSTRACT

Sexual violence against children is one of the new forms of crime, which involves children as the next generation of the nation, so that the crime is quite a concern among the community. Child protection is an effort to create a situation where all children can carry out their obligations and rights. As for the implementation of balance in a society, legal protection should be sought in various aspects of state and social activities. Children with disabilities are often the main target to be used as victims of criminals, discrimination and sexual violence. This can be seen from the increase in criminal cases against women and children with disabilities which tend to increase from year to year. The purpose of this study is to determine the legal protection of children with disabilities as victims of sexual violence and criminal sanctions against perpetrators of sexual violence against children with disabilities. The method used is a normative method along with statutory and conceptual approaches. The results of the study say that legal protection of children as victims of sexual violence is contained in article 1 paragraph (2) of Law No. 35 of 2014 concerning child protection, namely so that the child gets security and his rights as a child. The implementation of good rule enforcement based on proportional guidelines must seek to create an overall balance value, which includes the value of balance by the victim, the criminal, and the people as a whole.

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I. INTRODUCTION

Legal protection in Indonesia is given to every citizen of the country because every citizen of the country has the same rights and obligations as well as the same position in the law. Specifically, children and women are given extra legal protection because children and women are prone to becoming victims of crimes. Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to the witness and / or victim, legal protection of victims of crime as part of the protection of society, which can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.

Sexual violence is now a case that is endlessly debated, especially over the incidence of molestation of children under the age of consent, the perpetrators of which do not care about their occupation, position, status, education, or age. All of this is done when the perpetrator feels that he or she can vent his or her sexual desires through the act of lust, as the individual still has the power to control the sexual desires of the children, so that the children are more likely to be able to commit the act of sexual abuse or even rape.

A child with a disability is a child who has a disability that is not shared by children in general. The child who is also a person with a disability has a vulnerable and disadvantaged position, and in this case what is

meant by disadvantaged is that the child with a disability is at a very high risk of experiencing disabilities and criminal acts.

In cases of sexual violence against children with disabilities, judges have the authority to implement the court and are obliged to understand the consequences not only for children with disabilities who are victims of sexual violence but also the consequences for society itself. So that the decision that is born is a decision that is slightly unable to satisfy the victim and the community. In the life of the community, there is a perception that if the victim of a crime of sexual violence is a child, then of course the sanctions imposed by the judge are heavier than if the victim is an adult, and will be even heavier if the victim is a child who is categorized as a disabled child or commonly referred to as a disabled child.

Enforcement of criminal regulations is an opening against criminals who operate to eradicate or keep criminals in a limited state. The implementation of good criminal law enforcement based on proportional omesti guidelines seeks to create an overall balance of values, which includes the balance of values between the victims, the criminals, and the people as a whole.

The law often blames the victim, which is commonly referred to as discrimination against victims of sexual violence. People with disabilities are considered difficult to prove that they refused when they were harassed because of their limitations. The high number of cases of sexual violence against women illustrates the weakness of the law towards the protection of women, including women with disabilities.

The research method used in this article is a type of normative legal research in which legal research reviews written law from applicable laws and regulations and from various aspects, but does not review its application or implementation.

There are several previous studies on criminal sanctions for perpetrators of sexual violence against children with disabilities. Among them:

1. Karim, 2015, Airlangga University Surabaya. Dissertation with the title, Criminal Responsibility of Perpetrators Against Victims of Minor Crimes in the Perspective of Restorative Justice. This study explains the criminal liability of perpetrators against victims of minor crimes in terms of case settlement and victim losses. Although both studies are related to the criminal liability of the perpetrator, the author is more deeply concerned with girls with disabilities as victims of sexual violence in contrast to Karim who examines minor crimes in the perspective of restorative justice.
2. Huwaidah, 2016, Syarif Hidayatullah State Islamic University Jakarta. Dissertation with the title, Model of Guidance for Victims of Sexual Violence against Children in an Islamic Perspective at the Pulih Foundation, discusses the model of guidance for victims of sexual violence against children in an Islamic perspective at the Pulih Foundation and the factors that become obstacles and supporters in handling the problem of victims of sexual violence against children. Although both studies are related to sexual violence against children, this study examines sexual violence against children specifically children with disabilities. In addition, if what is studied and analyzed in Huwaidah's dissertation regarding the guidance model for victims is very different from the author's dissertation, which is more about the criminal liability of the perpetrator.

II. RESEARCH PROBLEMS

What are the criminal sanctions for perpetrators of sexual violence against children with disabilities?

III. RESEARCH METHODS

The article uses normative juridical research which examines written legal norms. The approach used is to collect and analyze laws and regulations related to the problem. In a conceptual approach that relies on doctrines and laws and regulations that develop and clarify responses and share legal concepts, legal definitions, and laws relevant to the problem as a way to solve the problem of punishment of perpetrators of sexual violence. The research data obtained is library research which examines laws and regulations to obtain primary legal materials sourced from the 1945 Constitution of the Republic of Indonesia and the Criminal Code (KUHP), Law Number 19 of 2011 concerning the ratification of the Convention on the Rights of Persons with Disabilities, Law Number 31 of 2014 concerning Witness and Victim Protection, Law Number 35 of 2014 concerning Child Protection, Law Number 8 of 2016 concerning Persons with Disabilities and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

IV. RESULT AND DISCUSSION

1. First Research Problem Discussion

Sexual violence is generally defined as a form of crime that attacks the honor of one's sexuality. These acts can be committed in a variety of ways, both directly (physical) and indirectly (psychological). Currently, regulations regarding sexual violence in Indonesia can be found in several regulations at both the national and regional levels. The more prevalent cases of rape are also increasingly diverse victims such as people with

disabilities or disabilities. The issue of people with disabilities or differently abled people is one that rarely receives attention from the government and the community. Especially in developing countries such as Indonesia, the neglect of the difable issue is caused by socio-cultural factors, in addition to economic factors and weak policies and law enforcement that favor the difable community. The CRPD, the Convention on the Rights of Persons with Disabilities, has been ratified by the Republic of Indonesia in the Law of the Republic of Indonesia Number 19 of 2011 on the Ratification of the CRPD. The CRPD sets out the broad rights of persons with disabilities, namely that every person with a disability must be free from torture or cruel, inhuman, degrading treatment, free from exploitation, violence and arbitrary treatment, and has the right to respect for their mental and physical integrity based on equality with others.

Criminal responsibility is a form of criminal action for the wrongdoer who carries it out. Therefore, criminal liability arises from the existence of errors that form a criminal offense committed by a person and the existence of rules governing the criminal offense. More protection for difables in Law No. 12 Year 2022 is realized in three ways. First, the aggravation of criminal sanctions for perpetrators of violence against difables. Second, the application of ordinary offense if the victim is disabled. Third, there is more protection for people with disabilities who are vulnerable to electronic-based sexual violence. This is important, because it means that Law No. 12 of 2022 recognizes the multiple vulnerabilities of women with disabilities.

The existence of an article that regulates the aggravation of criminal sanctions against perpetrators of sexual violence against persons with disabilities can be found in Article 15 paragraph (1) of Law No. 12 of 2022. It is clearly written that if sexual violence is committed against victims with disabilities as stipulated in Articles 5, 6, 8 to 14, then the criminal sanctions will be increased by 1/3.

Then, another progressive provision contained in the TPKS Law is the application of ordinary offenses if the victim is a person with disabilities. Article 7 paragraph (1) stipulates that non-physical sexual violence as stipulated in Article 5 and physical sexual violence as stipulated in Article 6 letter A, are complaint offenses. However, in Article 7 paragraph (2), the TPKS Law places an exception (exceptional clause), saying that the offense of complaint as referred to in Article 7 paragraph (1) does not apply if the victim is a person with disabilities or a child. This means that with the application of the ordinary offense, law enforcement officials can immediately act, if they know that there is physical or non-physical sexual violence against people with disabilities. If a complaint offense is applied, then law enforcement officials must wait for a report from the victim first before acting. This provision is very important, because difable victims of violence often experience obstacles when they want to report the sexual violence they experience.

Another regulation that provides more protection for people with disabilities is the special provision that protects people with disabilities from electronic-based sexual violence. Again, specifically for child victims and persons with disabilities, Article 14 paragraph (3) of the TPKS Law applies an ordinary offense, instead of a complaint offense as the norm applies if the victim is non-disabled. Thus, law enforcement officials can immediately take action if they become aware of the occurrence of electronic-based sexual violence against persons with disabilities, without having to wait for a report first. In addition, the protection of difables from electronic-based sexual violence is strengthened by the existence of Article 15 paragraph (5). There, it is clearly stated that, if someone conducts electronic-based sexual activities such as recording or transmitting images, even with the consent of the difable concerned, it is still classified as a criminal offense. This is because, in Article 15 paragraph (5), it is stated that if the victim of sexual violence is a child or a person with disabilities, then the existence of the will or consent of the victim does not eliminate criminal charges.

V. CONCLUSION

From the explanation of this research, it is concluded that legal protection for children with disabilities is contained in Article I paragraph 2 of Law No. 35 of 2014 concerning child protection, namely so that the child gets protection and his rights as a child are also protected by the right to life, growth and development and optimal participation in synchronization and human dignity, along with legal protection provided in order to obtain protection from violence and discrimination that will befall the child. Criminal sanctions for perpetrators of sexual violence against children with disabilities are contained in Articles 285 and 286 of the Criminal Code. Sanctions for criminal perpetrators of violence against children with disabilities currently there are no regulations that specifically regulate but in Law No. 35 of 2014 concerning Child Protection found in Article 290 paragraph {I} is threatened with at least seven years imprisonment.

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