

Legal Protection for Minors who are Victims of Criminal Sexual Abuse Committed by Their Own Biological Father (Case Study in Kedadi Village, Lebaksiu Subdistrict, Tegal Regency)

Siti Duwi Lestari

Universitas Muhammadiyah Purwokerto

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ABSTRACT

Sexual abuse of minors is a serious and complex issue in today's society. This research aims to analyze the impact of sexual abuse on minors and explore effective countermeasures. This research uses a qualitative approach with a case study method to gain an in-depth understanding of the issue. The research involved participants of child victims of sexual abuse, their families, as well as professionals and parties involved in handling these cases, such as child protection agencies, police, and hospitals. Data were collected through in-depth interviews, observation, and analysis of relevant documents. The results of this study provide insights into the psychological, social and emotional impacts experienced by child victims of sexual abuse. These findings are integrated with the perspectives of families and professionals involved in handling these cases. In addition, this research also explores the coping strategies that have been put in place and the challenges faced in an effort to provide protection, recovery and justice for child victims. By understanding the impact experienced by victims of sexual abuse and looking at the challenges faced in handling these cases, this research provides valuable insights for professionals and practitioners involved in social work, child protection, psychology and law. It is hoped that the findings of this study can serve as a foundation for the development of more effective policies and intervention programs that can help prevent child sexual abuse and provide better protection for affected victims.

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Corresponding Author:

Siti Duwi Lestari

Faculty of Law, Universitas Muhammadiyah Purwokerto

Jl. KH. Ahmad Dahlan, Kembaran, Banyumas, Jawa Tengah 53182, Indonesia

Email: duwil7985@gmail.com

I. INTRODUCTION

The child is a creation of the almighty god entrusted to the parents to be cared for, nurtured and educated as well as possible so that they grow and develop healthily and naturally. as the child grows, the child is considered vulnerable to acts of violence and abuse at high risk of causing sexual abuse experienced by minors ranging from family factors, environmental factors. value factors and individual factors.

The rise of sexual violence that occurs among children. Where children who are still not old enough to be victims of sexual violence. Children are always positioned as weak parties and have dependence on adults so that they are often exploited by irresponsible people.

Ironically, the perpetrators of sexual abuse that occur to children mostly come from the family environment, including their own homes, schools, educational institutions and the child's social environment. The deception and threats made by the perpetrator to the victim make this abuse difficult to avoid.

The impact of sexual abuse experienced by children can be physical, psychological and social. Sexual abuse can also cause victims to experience trauma over the events they experience and it will always be remembered in their minds resulting in depression then victims close themselves from socialising and apathy, so that victims are very disadvantaged in the future for the occurrence of sexual abuse.

Sexual violence against minors is one of the major problems faced by the government today because it is related to the incident (2016/2019) this incident lasted for 3 (three) years where the victim was a 17 (seventeen) year old child, the motive of the perpetrator committed sexual crimes in the form of acts of violence and indecency by force to (NNM). More precisely the case of sexual abuse of a minor occurred in Kedadi Village, Lebaksiu Sub-District, Tegal Regency.

Indonesia in particular has its own child protection law, namely Law No. 23 of 2004 on Child Protection as amended by Law of the Republic of Indonesia No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection (abbreviated as Child Protection Law). Articles 81 and 82 of the Child Protection Law stipulate that those who commit sexual abuse against children are punishable by a maximum of 15 (five ten) years imprisonment with a maximum fine of 5 billion rupiah.

previous research

Researcher name : Rosania Paradiaz, Eko Soponyono (2022), Title: Legal Protection Against Sexual Harassment, Problem Formulation: 1.How is law enforcement against criminal acts of sexual violence 2.How is legal protection for victims of sexual violence

Conclusion: Based on the results of the search for previous studies, the authors found studies on Legal Protection against sexual abuse of minors as follows:

1. "Sexual Violence: Myth and Reality", Ratna Batara Munti states that the term obscene acts are regulated in Articles 289 to 296 of the Criminal Code. This Crime Against Decency is regulated in CHAPTER XVI of Book II of the Criminal Code, which is as follows: a). crimes resulting from open violation of public decency (Article 281); b). crimes of pornography (Article 282); c). crimes of pornography against children (Article 283); d). The crime of pornography in the exercise of one's profession (Article 283b); e). the crime of adultery (Article 284); f). the crime of committing rape for carnal knowledge (Article 285); g). the crime of having carnal knowledge in a state of unconsciousness and helplessness without contracting marriage (Article 286); h). the crime of having carnal knowledge with a female child (Article 287); i). The crime of having carnal knowledge of a woman who is not of marriageable age causing minor or serious injury (Article 288); j). the crime of rape committing fornication or conduct offensive to the honor of decency (Article 289); k). the crime of committing obscene acts with a person who is unconscious and not of marriageable age (Article 290); l). If the crimes in Articles 286, 287, 289 and 290 result in serious injury (Article 291); m). the crime of committing obscene acts with a child of the same sex (Article 292); n). the crime of encouraging a person to commit obscene acts with a person who is not yet of age (Article 293); o). the crime of committing obscene acts with a child (Article 294); p). The crime of facilitating obscene acts with a child (Article 295); q). the crime of facilitating obscene acts as a livelihood or habit (Article 296); r). the crime of selling either women or men who are not yet of age (Article 297); s). the crime of making a source of employment from obscene activities carried out by others (Article 298). Then in Article 28G, it is explained that every human being has the right to protection of self, honor, family, dignity, and is entitled to a sense of security and protection, which is a human right.

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2. Evidence Stating evidence based on Article 184 in the Criminal Procedure Code: a) Witness testimony; b) Expert testimony; c) Letters; d) Clues; e) Statement of the defendant. for cases related to sexual abuse or rape, usually using one of the evidence in the form of a visum et repertum. Visum et repertum is a common term in the world of forensic medicine. Visum comes from Latin which means a sign of seeing. While repertum, means reporting which means what has been obtained from the doctor's examination of the victim. So that visum et repertum can be interpreted as reporting what is seen and found. If there are no visible signs of violence after the results of the visum et repertum come out, it would be much better to look for other evidence so that this act of sexual violence can be proven. Proof of physical violence is easily visible to the eye and can be proven by a visum et repertum while evidence of psychological violence is invisible because the pain can only be felt by the victim through his mind and soul. Sexual violence is discussed more clearly in Law No. 23 of 2004 on the Elimination of Domestic Violence in Article 8, Article 47, and Article 48. In Article 8 of Law No. 23 of 2004 there is only

one type of sexual violence, namely forced sexual intercourse. And so is the situation in Law No. 21 of 2007 concerning the Restriction of the Crime of Trafficking in Persons Article 1 number 8 which only regulates sexual exploitation.¹

Based on the previous research table, there are differences and similarities between previous authors and the author's current research, which are as follows.

1. The similarities between research numbers 1 and 2 with the author's research are both discussing the enforcement of sexual harassment laws against minors.
2. The difference between previous research and the author's current research, the difference between previous research numbers 1 and 2 lies only in the object. The object of the author's research is in Kedadi Village, Lebaksiu District, Tegal Regency.

II. RESEARCH PROBLEMS

1. What is the form of legal protection for victims of sexual harassment in kedadi village, lebaksiu sub-district, tegal district?

2. How is the law enforcement of the case?

III. RESEARCH METHODS

The type of research used in this research is qualitative juridical research. Empirical juridical research is a research approach that combines juridical aspects (law) with an empirical approach (based on real data). This method aims to understand and analyze the law in a practical context, using data and facts collected from social reality or real situations. Empirical juridical research refers to the application of scientific methods in studying legal phenomena and their impact on society.

IV. RESULT AND DISCUSSION

1. Forms of legal protection for victims of sexual harassment

According to Ricard J. Gelles (Huraira, 2012), Child abuse is the act of the intentional causing of harm or Harm to children (either physical, or emotional). Against forms of violence Children can be classified as violent physical, mental abuse, sexual abuse and social Sexual violence against children. According to End Child Prostitution in Asian Tourism. (ECPAT) International is a relationship or interaction between a child and Iderly or adult as strangers, relatives or parents where the child is used as The object of satisfaction of the perpetrator's sexual needs. This act is committed by force, threats, bribery, fraud and even coercion.²

The increase in violent cases of sexual harassment in Indonesia against women ranging from young children to teenagers is a strong warning to the state to take serious action with comprehensive policies. Community protection, including child protection, can be achieved in a variety of ways including compensation, access to health services and legal advice (mansur 2007), and psychological (Bentham and Legislation 2006).

Treatment of victims must be carried out in a comprehensive and integrated manner, especially the provision of reproductive health education, religious values and decency to victims who receive social rehabilitation in their environment, including mental health services in the handling of sexual crime recovery, including providing protection in the process. This case was tried at all levels of investigation, from the police to the prosecutor's office and court. This protection effort needs to be done as well as possible, so that the state is not left behind in providing protection for victims of sexual crimes.³

Sources and contributing factors of sexual violence

To explore the origins of child sexual abuse, the author uses the ideas of Sigmund Freud. According to Sigmund Freud, everyone has a libido (lust) that always needs to be vented.

However, one cannot always fulfill the need to release the libido that is rooted in the human body. This is due to social norms such as religious, moral and legal norms.

Contrary to Sigmund Freud's understanding, it can be understood that the source of sexual violence lies in the lack of collective control over individual actions and in the application and organization of social norms that have existed or been created by the local community.⁴

Forms of legal protection

The problem of children is not a small problem, but children as the descendants of the nation and state. Factors that are extraordinary support services for child victims of health Arif Gosita emphasized are as follows:

¹ Paradiaz, Rosania, and Eko Soponyono. "Perlindungan hukum terhadap korban pelecehan seksual." *Jurnal Pembangunan Hukum Indonesia* Vol.4 No.1 (2022): hal. 61-72.

² Ivo Noviana. "Kekerasan seksual terhadap anak: dampak dan penanganannya." *Sosio Informa* (2015): 52819.

³ Ahmad Jamaludin, Perlindungan Hukum Anak Korban Kekerasan Seksual, *Jurnal CIC Lembaga Riset Dan Konsultan Sosial* Vol.3 No.2 (2021): hal. 1-10.

⁴ Ismantoro Dwi Yuwono, S.H. Penerapan hukum dalam kasus kekerasan seksual terhadap anak Yogyakarta, 2015 hlm7

- a. willing to develop fair treatment for children
- b. Welfare laws that can support you in the implementation of child services as victims of crime victims
- c. facilities that will be used for victims⁵

Efforts to overcome the impact of sexual violence against children can be seen in article 69A of the Child Protection Law Number 35 of 2014 as follows:

- a. education about reproductive health, religious values, and moral values
- b. social rehabilitation
- c. psychosocial support for recovery after treatment
- d. providing protection and assistance at all levels of investigation, from investigation to prosecution and judicial process investigation⁶

2. Second Research Problem Discussion

Indonesian law does not recognize the term violence against women and children, despite the fact that it appears more and more prevalent in various parts of Indonesia. Therefore, the Indonesian government then issued Law No.23 of 2004 against the backdrop of recent developments which show that domestic violence often takes the form of physical, psychological sexual violence and domestic neglect in the lives of people whose victims are women and children.⁷

Sexual violence in the family environment is very concerning, because the family should be a comfortable and pleasant place for the growth and development of children. Some may think that it is impossible for close relatives such as fathers, uncles or older siblings to commit sexual violence against their own siblings, but this can happen because of external and internal support. The fear of reporting the perpetrator's actions makes many cases of sexual violence in the family difficult to interpret. The Child Protection Law is the basis for criminal prosecution for any child who has experienced inappropriate behavior.⁸

Protecting children from minor rapists does not end there, on May 25, 2016, President Joko Widodo signed PERPPU No. 1 of 2016 concerning the second amendment to the UUPA and is now Law No. 17 of 2016 which provides heavier legal sanctions, namely the provision of aggravating the basic imprisonment to a minimum of 10 (ten) years and a maximum of 20 years (twenty years), the perpetrator is sentenced to death, life imprisonment can be used with the following provisions: if more than one person is killed, there is severe injury, mental illness, infectious disease, disruption or loss of reproductive organs and / or the victim dies. also provides additional penalties in the form of disclosure of identity, chemical castration and installation of electronic surveillance devices to track the whereabouts of former prisoners. Looking at the data above, it can be concluded that the number of crimes of sexual violence (rape) has increased significantly, so the government has made legal breakthroughs with harsher penalties, even the special law on child protection has been amended twice with the issuance of article 81 of PERPPU No. 1/2016.⁹

by Law No. 23 Year 2004 on elimination of domestic violence, children and women who are victims receive all kinds of violence will get protection in the form of law enforcement against perpetrators of sexual violence/harassment. For perpetrators sexual violence against women and children get sanctions imposed based on Article 46, 47 and 48 of Law No.23, Year 2004 as follows:

Article 46

"All those who commit acts that are related to sexual violence Article 8(a) is a criminal offense imprisonment for a maximum of 12 (twelve) years or a maximum fine of Rp. 36,000,000.00 (three twenty-six million rupiah).

Article 47:

"Whoever forces a person who residing in his/her house to have sexual intercourse as referred to in Article 8(b) shall constitute a criminal offense imprisonment for a maximum period of 15 (fifteen) years or a minimum fine of Rp. 12,000,000.00 (two twelve million rupiah) or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).

Article 48:

⁵ Harahap, Irwan Safaruddin. Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual dalam Perspektif Hukum Progresif. *Jurnal Media Hukum* Vol.23 No.1 (2016) hal. 37-47.

⁶ Roy Syahputra. Penanggulangan terhadap tindakan kekerasan seksual pada anak ditinjau dari undang-undang perlindungan anak. *Lex Crimen* Vol.7 No.3 (2018) hal. 8.

⁷ Lavechia Audrey Getruida Lantang. "PENEGAKAN HUKUM BAGI PELAKU KEKERASAN SEKSUAL TERHADAP MAHASISWA BERDASARKAN PERMENDIKBUD 30 TAHUN 2021." *LEX PRIVATUM* Vol.10 No.5 (2022) hal. 8.

⁸ Vidyah Erika Lestari. "PENEGAKAN HUKUM BAGI PELAKU KEKERASAN SEKSUAL PADA ANAK DI LINGKUNGAN KELUARGA." *Bunga Rampai Isu-Isu Krusial tentang Kekerasan Seksual* (2022): 15.

⁹ Dwiki Apriyansa. "Penegakan Hukum Terhadap Tindak Pidana Pemerkosaan Terhadap Anak Dibawah Umur Dan Sanksi Yang Diterapkan." *Jurnal Panorama Hukum* Vol.4 No.2 (2019): 135-145.

"Consider the measures referred to because of Articles 46 and 47 the victim suffers an injury that gives no hope of recovery for a full recovery, suffered a disorder of thinking or psychiatry for at least 4 (four) weeks continuously or for 1 (one) non-consecutive year, abortion or fetal death, or resulting in the malfunctioning of the reproductive organs, shall be punished by imprisonment for a minimum of 5 (five) years and imprisonment for a maximum of 20 (twenty) years or a fine of at least Rp. 50,000,000. years or a fine of at least Rp. 25.00.000,00 (twenty five million rupiah) and maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). hundred million rupiah).¹⁰

As for the effects of the crime of sexual harassment of child victims, it can affect the future of the Indonesian nation, the perpetrators must be punished based on applicable provisions, namely according to Law 23/2002 Jo Law articles 81 and 82 of the Criminal Code. Article 287 when a person is forced to have sex with each other, the penalty is 5 (five) years imprisonment specified in article 292 of the Criminal Code.

Judging from the content, article 81 (1) of Law 23/2002 Jo Law 35/2014 anyone who intentionally commits violence or threat of violence to force a child to have sexual intercourse with him/her or with another person, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp 300,000,000.00 (three hundred million rupiah) and a minimum of Rp 60,000,000.00 (sixty million rupiah).

Meanwhile, Article 82 of Law 23 of 2002 Jo Law 35 of 2014 reads that every person who commits intentional violence or threat of violence, coercion, deception, lies, or persuades a child to commit or allow immoral acts to be committed, shall be punished with a maximum imprisonment of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp 300,000,000.00 (three hundred million rupiah) and a minimum of Rp 60,000,000.00 (sixty million rupiah). Article 287 paragraph (1) of the Criminal Code states that any person who has carnal knowledge of a woman outside of marriage, knowing or reasonably suspecting that she is not yet five years of age, or if her age is not clear that she is not yet marriageable, shall be punished with a maximum imprisonment of 9 (nine) years¹¹.

V. CONCLUSION

According to Ricard J. Gelles (Huraira, 2012), child abuse is the deliberate act of harming or injuring a child (either physically or emotionally). According to End Child Prostitution in Asian Tourism. (ECPAT) International is a relationship or interaction between a child and an older person or adult as a stranger, relative or parent where the child is used as an object to satisfy the sexual needs of the perpetrator. factors that become extraordinary support for child victim health services Arif Gosita emphasises are as follows: a. willing to develop fair treatment for children b. welfare laws that can support the implementation of services for children as victims of criminal offences c. facilities that will be used for victims Efforts to overcome the impact of sexual violence against children can be seen in article 69A of the Child Protection Law Number 35 of 2014 as follows: a. education about reproductive health, religious values, and moral values b. social rehabilitation c. psychosocial support for post-treatment recovery d. provision of protection and assistance at all levels of examination, starting from investigation, prosecution, and examination at the court session.

by Law No. 23 Year 2004 on elimination of domestic violence, children and women who are victims receive all kinds of violence will get protection in the form of law enforcement against perpetrators of sexual violence/harassment. For perpetrators sexual violence against women and children get sanctions imposed based on Article 46, 47 and 48 of Law No.23, Year 2004. Meanwhile, Article 82 of Law 23 of 2002 Jo Law 35 of 2014 reads that every person who commits intentional violence or threat of violence, coercion, deception, lies, or persuades a child to commit or allow immoral acts to be committed, shall be punished with a maximum imprisonment of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp 300,000,000.00 (three hundred million rupiah) and a minimum of Rp 60,000,000.00 (sixty million rupiah). Article 287 paragraph (1) of the Criminal Code states that any person who has carnal knowledge of a woman outside of marriage, knowing or reasonably suspecting that she is not yet five years of age, or if her age is not clear that she is not yet marriageable, shall be punished with a maximum imprisonment of 9 (nine) year.

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¹⁰ Lantang, Lavechia Audrey Getruida. "PENEGAKAN HUKUM BAGI PELAKU KEKERASAN SEKSUAL TERHADAP MAHASISWA BERDASARKAN PERMENDIKBUD 30 TAHUN 2021." *LEX PRIVATUM* Vol.10 No.5 (2022).

¹¹ Handayani, Trini. "Perlindungan Dan Penegakan Hukum Terhadap Kasus Kekerasan Seksual Pada Anak." *Jurnal Hukum Mimbar Justitia* Vol.2 No.2 (2018): 826-839.

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