

Juridical Analysis of The Crime of Sexual Abuse of Early Childhood in Banyumas

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ABSTRACT

This article wants to answer how legal certainty in the implementation of legal protection against children as victims of sexual abuse in Banyumas City, this research found that sexual crimes against early childhood committed in Banyumas Regency are very rampant. The act of sexual abuse can cause severe physical and psychological harm to the victim, especially if the victim is a young child who lacks the ability to protect herself, and is completely dependent on her caregivers and surroundings. The problem is whether the victim protection regulations are appropriate in juvenile criminal justice and how to prove and apply the law to minors, One of the institutions responsible for this is the Institute for the Protection of Women and Children (LPPA) in Banyumas Regency, The method of analyzing the juridical approach used by LPPA in handling cases of sexual abuse of early childhood in Banyumas Regency, The method used is normative juridical research with a statutory approach (statue approach). The data used is sourced from relevant laws, regulations and legislation.

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I. INTRODUCTION

Sexual abuse is a crime against decency regulated in Chapter XIV of the Criminal Code on crimes against decency. According to the legal dictionary, obscene means vile and dirty, indecent because it violates decency, decency. The act of obscenity is any form of action, whether committed on oneself or committed to another person regarding and relating to the genitals or other parts of the body that can stimulate social lust.¹

The crime of sexual abuse is a sexual crime committed against a person by force or without the consent of the victim. The act of sexual abuse can cause a very severe psychological impact on the victim, especially if the victim is an early age child. The crime of child sexual abuse is a crime against humanity.² Parents are entrusted and entrusted with children by God Almighty. Just like adults, children also have human rights, have dignity as a whole human being who has human rights that must be respected by everyone, protected by law and upheld by the State.³

The number of cases of child abuse in Banyumas district shows that the quality of child protection is poor. The existence of children who are not yet able to live independently, of course, really needs people as a shelter. The low quality of child protection in Indonesia has drawn criticism from various elements of society. The question that is often raised is the extent to which the government has attempted to provide (legal) protection to children so that children can obtain guarantees for

their survival and livelihood as part of human rights. In fact, based on Article 20 of Law No. 23/2002 on Child

Protection, those who are obliged and responsible for the implementation of child protection are the state, government, community, family and parents. 4 Protection of victims of criminal acts can be defined as protection to obtain legal guarantees for the suffering or losses of parties who have become victims of criminal acts. Everything that can alleviate the suffering of the victim of a criminal offense. The suffering that a person experiences as a result of being victimized is what is meant by victim protection. Efforts to alleviate this suffering can be made by reducing the physical suffering and mental suffering of victims.

While in a previous study by Whildhayanti Ayu, entitled "Juridical Review of the Crime of Child Molestation in Review of Indonesian Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection (Study of Decision Number 3508 / PLID.SUS / 2018 / PN MDN)" The problem in this study is How is the criminal liability for the perpetrator who commits the crime of child molestation and How is the psychological impact of children who experience the crime of molestation, and How is the judge's consideration in imposing a verdict on the perpetrator of the crime of molestation.

Whereas in the previous research by David Casidi Silitonga and Muaz Zul entitled "Application of Law Against Perpetrators of Child Molestation (Study of the Binjai District Court)", the problem in this study is how the judge's decision can deter the perpetrators from committing the crime again, besides that it is also necessary to provide guidance to rehabilitate the perpetrators so that they will not repeat their actions by instilling religious norms in themselves. ⁵

II. RESEARCH PROBLEMS

1. How is the legal protection of children as victims of the crime of sexual abuse?
2. How is the legal proof of minors as victims of the crime of sexual abuse?

III. RESEARCH METHODS

This type of research uses a normative juridical method with a statutory approach (statue approach) Normative juridical method is a method of research The method in this research is by examining document studies, namely by examining data materials such as legislation, court decisions, and legal theories. Data sources in this research use main or primary data. Primeir data in this research uses positive criminal law regulations that are relevant to the existing problems. This research includes analytical descriptive research, which describes the applicable laws and regulations or positive laws that are associated with legal theory and the practice of implementing positive law in society.

Descriptive research is research to solve problems that exist in the present (actual problems) by collecting data, compiling, clarifying, analyzing and interpreting. Thus this research can provide an overview of the regulation of sexual abuse, especially for victims of sexual abuse at an early age in criminal law, and because this research focuses more on a normative juridical approach, the determination of population, samples, and sampling techniques is not a necessity.

IV. RESULT AND DISCUSSION

1. Legal Protection for Minor Victims of Sexual Abuse

The definition of protection is a place of refuge, things (actions and so on) protecting in Law No. 23 of 2002 is all efforts aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties temporarily or based on court decisions. ⁶

The position of victims in criminal justice as justice seekers has been neglected. When examined from the objectives of punishment in positive law, criminals receive more attention such as rehabilitation, treatment of offenders, social readaptation, correctional, and others. This is a form of injustice for victims, because being the injured party is only functioned as a vehicle for verification and not sporadic as well as the human rights of victims are neglected. ⁷

Law No. 39 of 1999 on human rights states that every child has the right to protection by parents, family, community and the state (Article 52 paragraph (1)). Children's rights are human rights and for their benefit they are recognized and protected by law even from the womb (paragraph (2)). Every child from the moment of conception has the right to live, survive and raise their standard of living (Article 53 paragraph (1)). Every child, from the moment of birth, is entitled to a name and citizenship status. By way of explanation, what is meant by a name is one's own name, and the name of one's biological parents and/or the name of one's parents. family and or surname paragraph (2). Every child with a physical or mental disability has the right to receive special care, education, training and assistance at state expense, to ensure his or her life in accordance with human dignity, increase self-confidence and the ability to participate in the life of society,

nation and state. With an explanation, the implementation of the rights of physically and or mentally handicapped children at state expense is prioritized for the unwilling (Article 54).⁸

Legal protection is to provide protection to human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law or in other words, legal protection is a variety of legal efforts that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party.⁹

Legal protection provided to child victims of sexual crimes, namely by organizing the rights of victims as specified in Law Number 23 of 2002 concerning Child Protection. Child Protection as referred to in Article 1 number 2 of the Law is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with the dignity of humanity, and receive protection from violence and discrimination. Legal protection provided to child victims of sexual crimes, namely by organizing the rights of victims as specified in Law Number 23 of 2002 concerning Child Protection. Child Protection as referred to in Article 1 number 2 of the Law is all activities to ensure and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violence and discrimination".¹⁰

2. Legal proceedings against minors as victims of sexual abuse.

Proof is the act of proving. To prove means to give or show evidence, to do something as true, to carry out indications, to witness, and to convince.¹¹ R. Subekti explains jika If proof is to convince the judge of the truth of the argument or arguments put forward in a dispute.

One of the problems arising in the handling of criminal acts of minors as victims is the evidentiary power of child victim witness testimony. This means that the testimony is only used as a clue because it does not meet the formal and material requirements as a witness statement. Meanwhile, Article 171 of the Criminal Procedure Code states that minors under the age of fifteen (15) years or unmarried are allowed to give testimony but may not be sworn. However, Article 160 paragraph (3) of the Criminal Procedure Code requires an oath or promise, witness testimony from someone who is not sworn does not have the power as valid evidence. This is one of the reasons why justice for victims is hampered.¹²

The role of witnesses in every criminal trial is very important because witness testimony can influence and determine the tendency of the judge's decision. A witness is considered to have the ability to determine the direction of the judge's decision. This has the effect that every witness statement always receives great attention both by the legal actors involved in the trial and by the legal observers.¹³

The tools of evidence that can be used in proving in court, including in the case of a child criminal offense as a victim of sexual abuse, are the tools of evidence that have been determined in the formulation of Article 184 paragraph (1), including witness testimony, expert testimony, letter evidence, evidence of instructions, and testimony of the defendant.

a. Witness Statement

Witness testimony as one of the evidence in a criminal case is in the form of a statement from a witness regarding a criminal event that he hears, sees and experiences himself by stating the reasons for what he knows. Witness testimony as evidence is regulated in Article 185 paragraph (1) of the Criminal Procedure Code, namely what the witness states before the court. This evidence is the most important, but in order for this witness statement to be considered valid as evidence that has evidentiary value, it must fulfill the following conditions:

- a) Must take an oath or promise
- b) Information that has value as evidence
- c) Testimony that must be given in court
- d) The testimony of one (1) witness is considered insufficient
- e) The testimony of several witnesses standing alone

b. Expert Testimony

Expert testimony is information provided by a person who has special expertise on matters necessary to make light of a criminal case for the purpose of examination. Article 186 states that expert testimony is what an expert states in court. Valid expert testimony can go through the following procedures: a) Requested by the investigator at the investigation stage; b) Expert testimony requested and given in court.

c. Letter Evidence

The definition of this evidence is regulated in Article 187 of the Criminal Procedure Code which reads: The

letter as referred to in Article 184 paragraph

(1) letter c, made on oath of office or corroborated by oath, is:¹⁴

- a) Minutes and other letters in official forms made by authorized public officials or made in their presence, which contain information about events or circumstances that are heard, seen or experienced by themselves, accompanied by clear and firm reasons for the information.
- b) A letter made in accordance with the provisions of laws and regulations or a letter made by an official concerning a matter included in the administration for which he is responsible and which is intended to prove a matter or a situation.
- c) A certificate from an expert containing an opinion based on his expertise on a matter or circumstance formally requested from him.
- d) Other documents that can only be valid if they are related to the contents of other evidentiary instruments.

Article 188 of the Criminal Procedure Code provides a formulation of clue evidence, which contains: 9 1) Clues are acts, events or circumstances, which because of their correspondence, both between one another, as well as with the criminal act itself, indicate that a criminal act has occurred and who the perpetrator is. 2) Clues as referred to in paragraph (1) can only be obtained from: a. witness testimony b. statement letter c. statement of the defendant 3)

Assessment of the evidentiary power of a clue in each particular situation shall be made by the judge wisely, after he or she has examined the clue.

conduct an examination with due care and accuracy based on his/her conscience.

e. Defendant's Statement

Article 189 of the Criminal Procedure Code regulates the statement of the defendant, which reads:

- 1) The statement of the defendant is what the defendant states in court about the actions he committed or that he knows himself or experiences himself.
- 2) The statement of the defendant given outside the trial can be used to help find evidence in the trial, provided that the statement is supported by a valid piece of evidence insofar as it relates to the matter charged.
- 3) The statement of the defendant can only be used against himself.
- 4) The statement of the defendant alone is not sufficient to prove that he is guilty of the act charged to him but must be accompanied by other evidence.¹⁵

V. CONCLUSION

Legal protection as a victim of sexual abuse is regulated in the Law on Child Protection, Law on Witness and Victim Protection, and other laws. The forms of legal protection for children include protection in the judicial process and protection of child welfare.

Based on the results of the research and discussion above, the researchers can conclude that the model of handling criminal offense evidence on child victims of sexual abuse adheres to the construction of Article 184 Paragraph of the Criminal Procedure Code, namely by using evidence according to the Law. The implementation of evidence begins with presenting witnesses to be questioned, witness testimony is the main evidence in criminal cases.

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