

Juridical Analysis of the Crime of Child Abuse Is Also Done by Children

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Abstract

The purpose of this study is to determine the qualifications of criminal acts of sexual abuse of children in the view of criminal law. And to find out the application of criminal law to the crime of child abuse committed by children in Decision Number 8/Pid.Sus-Anak/2017/PN.Tgn. The research method uses normative law which places law as a system of norms, concerning principles, rules, laws and regulations, court decisions, agreements, and doctrines. Primary, secondary, and tertiary research methods are data obtained from the literature that have a relationship with the research focus. In normative legal research, the main source of data from primary law includes regulations, legislation, and legal materials. secondary includes legal books, legal experts, and scholarly academics. Tertiary includes an explanation of primary legal materials and secondary legal materials. Conclusion Qualification of criminal acts of sexual abuse of children in the view of criminal law can be qualified in Articles 290-296 of the Criminal Code as *lex generalis* and Articles 76E and Article 82 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2014 concerning Child Protection as *lex specialis*. The application of material criminal law by the Panel of Judges of the Tangerang District Court in case Number 8/Pid.SusAnak/2017/PN.Tgn which stated that the defendant MF had been legally and convincingly proven guilty of committing the crime of sexual abuse of a child with the victim NPA regulated in Article 82 Jo. Article 76E UU RI No. 35 of 2014 concerning Amendments to RI Law No. 23 of 2002 concerning Child Protection is correct.

Keywords: Juridical Analysis, Crime, Child Abuse

A. Introduction

Children are a mandate and entrusted by Allah SWT. As for children, they are in line with human civilization, which is growing day by day. (Budi Prasetyo, 2015). Children as the younger generation are the successors to the ideals of the nation's struggle and human resources for development. Children are a form of long-term investment whose role cannot be ruled out in realizing the life of the nation and state in all areas of life. The future of the nation and state in the future is in the hands of today's children. The better the personality of the child at this time, the better the life of the nation and state will be in the future.

However, in reality in social life, the situation is very complex, and the problems that accompany children's lives, both aspects of education, health, and unfair treatment in terms of the legal aspect itself. (HumaIda, Diesmy, et al. 2015). Cases such as sexual harassment, rape, obscenity, violence against children, to the trafficking of children to minors for commercial sex

work are also often published in the media as if there is no day without cases involving children in Indonesia.

Children as weak and helpless people certainly don't understand what is good and what is bad to do. The behavior of minors related to sexual immorality is not enough to be seen as ordinary delinquency. (Ismantoro, D. Yuwono. 2015). Children who commit this crime of obscenity can be caused by several factors, including the great curiosity possessed by children, the large circulation of pornographic videos, the dating style of today's children that is less controlled, technological developments, family factors, and factors imitating other people's behavior. people around him, religious values that are increasingly lost in society, television shows, and internet networks that increasingly provide sites that are not good for children.

This kind of thing needs special attention from the family and the surrounding community so that it can encourage concrete steps to restore the physical, psychological, and social conditions of child victims and/or child perpetrators of crimes. (Karnaji. 2017). And this growing problem needs to be addressed and resolved immediately which is not only the responsibility of the state but also requires active participation from all levels of society. This needs to be done to anticipate child victims and/or child perpetrators of crimes in the future so that the acts become perpetrators and victims of the same crime

B. Research Methods

This type of normative legal research, namely legal research places law as a system of norms. (Sugiyono., 2016). The norm system in question regards the principles, norms, rules of laws and regulations, court decisions, agreements, and doctrines.

1. Data Source

The data used in secondary data research are data obtained from library materials or literature that have a relationship with the research object. In normative legal research, the main source of data comes from primary legal materials including laws and regulations, secondary legal materials include books written by scholars, jurists, and academics who are scientific in nature and tertiary materials include explanations of primary legal materials and legal materials. secondary law.

2. Data Collection Methods

- a. Research interviews are more than just conversations and range from informal to formal.
- b. Documentation study is a method of collecting information by studying documents to obtain information related to the problem being studied and researched
- c. Observation is a data collection technique that is carried out systematically and deliberately through observing and recording the symptoms investigated (Noor, 2015). Banister (Herdiyanto, 2016), explains observation is the process of paying attention and observing carefully and systematically regarding the intended behavioral target. The use of observation as a research method is because this observation technique relies on direct experience.

3. Data Analysis

In data analysis, it is the process of systematically searching for and compiling data obtained from interviews, field notes, and other materials, so that it can be easily understood, and the findings can be informed to others.

C. Results and Discussion

1. Qualifications for the Criminal Act of Obscenity Against Children in the View of Criminal Law

In criminal law, it is known that one of the principles which is a fundamental principle that must be maintained for the sake of legal certainty is the principle of legality. (Mulyadi, Budi. 2018). The principle of legality, namely the principle that determines that every criminal act must be regulated in advance by a rule of law or at least by a rule of law that already exists or applies before the person commits the act. Everyone who commits a crime must be legally accountable for his actions.

Obscenity is a crime that violates decency regulated in Articles 289 to 296 of the Criminal Code, where Article 289 states that: (Nasution, S.R.P. 2015). Anyone who uses violence or threats of violence to force someone to do or allow obscene acts to be done to him or her, is punished for damaging decency with a maximum imprisonment of nine years.

The crime in Article 285 has similarities and differences with the crime in Article 289 (obscene) where the similarity lies in the elements of material acts of both types of crime, namely coercion (dwingen) with violence and threats of violence. (Ony Rosifany. 2020). While the difference is that forcing on rape is aimed at having intercourse or the maker can have intercourse with a woman who is forced. Another difference is that the person who is forced to have sexual intercourse must be a woman, whereas in obscenity rape the victim can be a man or a woman.

Based on the discussion above, the writer can conclude the differences in these crimes, namely as follows:

- a. Fornication is any form of action that violates decency (decency) related to the genitals or other body parts that can stimulate sexual desire.
- b. Rape is the act of having intercourse with a man against a woman in which the act is carried out under coercion and against the will of the woman concerned.

2. Criminal Sanctions Against Children as Criminal Acts of Obscenity Against Children in the View of Criminal Law

The following are the types of punishment that can be imposed on children as perpetrators of crimes according to Principal crimes for children consist of:

- a. Warning sentence;
- b. Criminal terms: Development outside the institution; Society service; or Supervision.
- c. Work training;
- d. Institutional coaching; And
- e. Prison.

As for the explanation of the types of punishment that can be imposed on children as perpetrators of crimes according to Article 71 of Law Number 11 of 2012. (Pahlevi, R. 2021). The authors describe it as follows:

Several principal crimes can be imposed on children, namely: (1). Warning punishment According to Article 72 states that:

- a. Penalties with conditions can be imposed by the judge in terms of imprisonment imposed for a maximum of 2 (two) years.
- b. In a court decision regarding punishment with the conditions referred to in paragraph (1) the general conditions and special conditions are determined.
- c. As long as the child is serving a sentence with the conditions referred to in paragraph (7), the child must attend 9 (nine) years of compulsory education.

3. Application of Criminal Law Against Child Abuse Crimes in Decision Number 8/Pid.SusAnak/2017/PN.Tgn

Judges in examining criminal cases, try to find and prove material truth based on the facts revealed in the trial and adhere to the indictment formulated by the Public Prosecutor. Based on the description regarding the application of material criminal law to the crime of child abuse committed by children in decision Number: 8/Pid.Sus-Anak/2017/PN.Tgn, which is as follows:

The case of obscenity that the author examined occurred on Sunday, February 12 2017 at around 13.30 WITA at Kaccilolo. Arriving at the perpetrator's house, the victim and the perpetrator chatted in the living room for about 30 (thirty) minutes. (R. Saragih, 2016). Shortly thereafter, the perpetrator invited the victim to have sex like husband and wife by saying "Come on mi" and the victim said, "Come on what?" Then the perpetrator said "Let's do that" but the victim refused.

Furthermore, the perpetrator kissed the cheeks, and lips, while touching the victim's breasts and then the perpetrator inserted his finger into the victim's vagina. After that, the victim saw the perpetrator holding his penis and then shaking it until a white liquid (sperm) was released, then they cleaned the white liquid and immediately put their clothes back on.

4. Indictment of the Public Prosecutor Against the Crime of Obscene Against Children in the View of Criminal Law

In making an indictment, what must be considered is the result of the examination and the article on which the crime was violated. (Farid, Hammy. Et. al. 2022). The public prosecutor who carries out the task of prosecution makes an indictment based on the minutes provided by the investigator to proceed to the examination stage at the trial court. In case Number 8/Pid.Sus-Children/2017/PN. In this regard, the Public Prosecution Service uses a single indictment. The single charge was charged with only one crime. The indictment in in case the author describes as follows:

- a. That he was the perpetrator of the MF child on Sunday 12 February 2017 at 13.30 WITA which took place in Kaccilolo, which are carried out in the following ways:
- b. That at the time and place as mentioned above, it started when the MF child perpetrator came to the NPA child victim on a motorcycle and asked him to go to his house, and the victim immediately followed.
- c. When he arrived in the room, the perpetrator said "come on mi" which means "come on" and the victim answered "Come on what" and the perpetrator answered "come on me like that" which the victim meant that the perpetrator invited the victim to have intercourse like husband and wife, but the victim still refused, but the perpetrator immediately pulled the victim's pants apart and immediately opened the victim's pants.
- d. Whereas then the perpetrator held the victim's genitals (vagina) using the index finger of his right hand for about 5 minutes. Furthermore, the perpetrator pulled the victim sideways and touched his genitals to the victim's genitals (vagina) then shook his buttocks to the edge of the victim's genitals (vagina) but did not enter and the perpetrator's genitals (penis) released white liquid (sperm) and hit the hips and genitals victim's genitals.
- e. Before this incident, the perpetrator had often committed obscene acts against the victim for the first time on January 13, 2017, the second time on January 19, 2017, and the third time on February 7 2017 which was carried out at the perpetrator's cousin's house and usually before the I asked the victim to do this, the perpetrator always said "if you don't want to have anything to do with me anymore, I will tell your friend" because the victim was afraid, so the victim wanted to follow everything.
- f. That the existence of an obscene act committed by the perpetrator against the victim was corroborated by the information contained in the Visum Et Repertum from the Bhayangkara Hospital Tangerang Number: VeR/084/II/2017/Forensic 14 February 2017 which was signed by Dr. Mauluddin. M.Sp. F, with the examination results which are essentially as follows: (a). Pubic porch (vaginal vestibulum): obvious redness on the right and left. (b). Hymen (hymen): Old torn wounds are visible at 1,5,8 and 11 o'clock with

sliding abrasions on the right side. (3). Intercourse hole (vagine introitus): clear redness on the right side and bottom.

5. Demands of the Public Prosecutor Against the Criminal Act of Obscene Against Children in the View of Criminal Law

The Public Prosecutor's Claim is the request of the Public Prosecutor to the Panel of Judges when trying a case. As for the criminal charges from the Public Prosecutor as outlined in the Charges Letter Number: (Kilwouw, 2019). PDM-04/Sunggu/Euh.2/05/2017 which requests the Panel of Judges who examined and tried this case to decide as follows:

- a. The perpetrator of the child MF has been legally and convincingly proven guilty of committing the crime of obscenity as stipulated and subject to criminal penalties in Article 82 Jo. Article 76E UU RI No. 35 of 2014 concerning Amendments to RI Law No. 23 of 2002 concerning Child Protection as a single indictment;
- b. Sentence punishment against the perpetrators of MF children with imprisonment for 2 (2) years and 6 (six) months in LPKA (Institute for Special Development for Children) Class II B in Maros is fully deducted while the Child is in detention with an order that the Child remains detained and work training for 6 (six) months at LPKA (Institute for Special Development for Children) Class II B in Maros;
- b. Evidence in the form of: (1). 1 (one) pink t-shirt. (2). One (1) checkered long-sleeve shirt. (3). 1 (one) black training pants with red stripes. Crushed to be annihilated (1). Ordered that the Child be kept in custody; (2). Burdening the Child to pay court fees of Rp. 2,000.00 (two thousand rupiahs).

6. Legal considerations of judges in passing decisions on criminal acts of sexual abuse of children in the view of criminal law

The judge's legal considerations in deciding on the crime of child abuse committed by a child in Decision Number 8/Pid.Sus-Anak/2017/PN.Tgn, based on several considerations the judge examines and makes a decision based on the indictment. (Aprilia, Dwi, 2020). After the judge hears the reading of the indictment by the Prosecutor or Public Prosecutor, the judge then examines whether the alleged crime has been proven or not. Therefore, in this case, it has been identified based on the following evidence:

- a. The testimony of the witnesses at trial were: Witness Victim NPA, Witness Midun bin Muhammad Harunn, Witness Ida S. Binti H. Husada, Witness Murni Dg. Rango, Witness Wanda Anggraeni Midun Alias Wanda Binti Midun.
- b. The Defendant's statement is a child with the initials MF. Evidence in the form of 1 (one) piece of pink t-shirt, 1 (one) sheet of long-sleeved checkered shirt with white stripes, and 1 (one) sheet of black training pants with red stripes.

The indictment is the basis for the Public Prosecutor to prepare a charge letter and is the basis for the judge to sentence the perpetrator of the crime.

Therefore, in drawing up an indictment. (Pahlevi, R. 2021). The public prosecutor is required to apply his knowledge as a law scholar in drafting the indictment, not only expertise in the field of formal criminal law but also regarding material criminal law such as the elements of the act to be charged whether they have been fulfilled. or not. A defendant can only be sentenced because it has been proven in court that he has committed a crime as stated by the prosecutor in his indictment.

D. Conclusions and Suggestions

1. Conclusion

Based on the results of the research and discussion described above, the authors draw the

following conclusions:

- a. The qualification of the criminal act of sexual abuse of children in the view of criminal law can be qualified in Articles 290-296 of the Criminal Code (KUHP) as a *lex generalis* and Article 76E and Article 82 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2014 concerning Child Protection as a *lex specialis*. Since the cases the author is researching are cases of children, it is more appropriate to use the Child Protection Act, namely Article 76E and Article 82, which fulfill the following elements: (a). Each person; (2). Deliberately committing violence or threats of violence, coercing, tricking, lying, or persuading the child; (3). Doing or allowing obscene acts to be committed.
- b. The Public Prosecutor's Single Indictment and has been based on the facts at trial, the evidence submitted by the Public Prosecutor in the form of witness statements, documentary evidence in the form of *Visum Et Repertum*, the defendant's statement, and evidence that are mutually compatible. The defendant is also considered physically and mentally healthy so he is considered capable of being held accountable for his actions. Apart from that, the Panel of Judges at the Tangerang District Court, in their considerations, still had several shortcomings, especially in their subjective considerations, namely in consideration of the things that were aggravating to the defendant.

2. Suggestion

Based on the results of the discussion and conclusions, several recommendations can be given in the form of suggestions, namely as follows:

- a. Judges must be more careful and observant in considering aggravating or mitigating circumstances for the defendant and the criminal sanctions he has imposed. However, judges have a big contribution in reducing or increasing the number of crimes that occur in society. This means that judges must be able to provide a deterrent effect for the accused so they do not repeat their actions as well as a deterrent effect for the public so they are afraid of committing crimes.
- b. For the Panel of Judges, in passing a decision, it should not only be oriented toward the perpetrators of a crime but also need to consider the extent to which the impact of the perpetrator's actions has on the victim and society in general.
- b. Parents, including children, should be aware of the possibility of criminal acts, especially sexual abuse of children, because criminal acts of sexual abuse can happen to anyone, anytime and anywhere, regardless of their environment and economic and educational background.
- c. For law enforcement officials and the public to provide active and comprehensive legal counseling, especially to minors regarding the impact of committing a crime that results in harm to the child himself.

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