


Criminology of Sexual Acts Committed by Children

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Abstract

Introduction: Child as an unlawful act committed solely as a reaction to pressure or pressure from within and from the child's environment.

Purposes of the Research: The aim of this research is to examine and analyze the factors that cause children to commit crimes of sexual intercourse and to analyze and explain efforts to overcome criminal acts of sexual intercourse committed by children.

Methods of the Research: The type research to be used is normative legal research, which is a study that examines positive legal provisions, legal principles, legal principles and legal doctrines to answer the legal issues faced.

Results Main Findings of the Research: The results of this research show that children have sexual intercourse with children specifically, namely the child is in his teens and his psychological condition is still very unstable, resulting in the child not being able to think long and hard about the criminal act he committed. Efforts to overcome the crime of sexual intercourse committed against children are through preventive measures in a non-penal way, namely by educating the community and schools to monitor and pay attention to a person's activities or behavior so that they do not deviate. So when handling cases against children there needs to be maximum sanctions and punishments aimed at strong self-control so that they are not easily tempted to do something that is not good in their hearts and minds.

Keywords: Children; Crimonological; Criminal Acts Of Copulation.

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INTRODUCTION

The protection of children is specifically regulated in Law Number 35 of 2014 concerning Child Protection. Through Law Number 35 of 2014, the guarantee of children's rights is protected, and even the Indonesian Child Protection Commission was established which has the responsibility to strengthen the effectiveness of child protection,¹ in Law Number 35 of 2014 in Article 15 stipulates that: "Every child has the right to obtain protection from; abuse in political activities; involvement in armed disputes; involvement in social unrest; involvement in events that contain violent elements; involvement in wars; and sexual crimes". The provisions of child crime are called child delinquency which is defined as a form of crime committed by children in special titles from the Criminal Code and or the procedures of laws and regulations². The purpose of implementing the juvenile justice system prioritizes the goal of child welfare as a criminal justice system for children that will

¹ M. Nasir Djamil, *Anak Bukan Untuk Dihukum, Ctk.Kedua*, Sinar Grafika, Jakarta Timur, 2013, p. 9, dalam Wikan Aji. *The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia*, *Journal of Indonesian Legal Studies*, 4 no 1 (2019).

² Maulana Hassan Wadong, 2000, *Pengantar Advokasi dan Hukum Perlindungan Anak*, Grasindo, Jakarta, p. 81.

prioritize the welfare of children and will ensure that any reaction to juvenile offenders will always be commensurate with the circumstances of both the offenders and the violations of the law.³

The protection of Indonesian children means protecting the potential of human resources and building the whole Indonesian human being, towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Constitution. Although child protection has been placed at a positive normative level, negative actions against children are still rampant and even escalatory such as neglect, torture, discrimination, and sexual intercourse against children which occupy the mainstream of the news every day. In the applicable laws and regulations in Indonesia, legal protection for children as perpetrators of criminal acts aims to avoid labeling of the child because labeling is very important to be avoided for children who commit criminal acts.⁴ The act of sexual intercourse against children is allegedly due to the influence of social networks, pornography sites via the internet, pornography, pornography and a hippie and permissive lifestyle, but there is one opinion that is the most undeniable level of truth that the victim himself is a criminogenic factor (also the cause of crime in the form of sexual intercourse) or in the perspective of victimology is often called victim precipitation.⁵ The unlawful act committed is solely a reaction to pressure or pressure from within and from the environment of the child concerned.⁶

Regarding children's problems, often children are victims of crimes, especially sexual crimes such as sexual abuse, sexual torture, sexual slavery, rape and intercourse. Mulyana W Kusumah explained that the development of crime by minors has so far been difficult to know for sure, but in general, looking at the data that has been recorded, it seems that the fluctuation in crime can be said to have not increased or decreased.⁷ Children who are victims of sexual crimes such as sexual intercourse, are generally committed by adults. This happens because of the child's weak physical factors and also his mindset which is still very easily affected directly or indirectly. Children as convicts are sentenced not to be punished but to be fostered in correctional institutions, but children in criminal punishment need to receive special treatment while serving their sentences.⁸

The crime of sexual intercourse against children is part of the crime of morality regulated in Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, which has been amended into Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The crime of sexual intercourse with a child is a criminal act regulated in Book II of the Criminal Code, where the handling of the case is not differentiated between intercourse with children committed by children and sexual intercourse with children committed by adults against children. The rights of children must be upheld by everyone, unfortunately in its application law

³ Abintoro Prakoso, 2010, *Vage Normen Sebagai Sumber Hukum Diskresi yang Belum Diterapkan oleh Polisi Penyidik Anak*, *Jurnal Hukum Ius Quia Iustum*, Yogyakarta, p. 251.

⁴ Barda Nawawi Arief, 1998, *Perlindungan Korban Kejahatan Dalam Proses Peradilan Pidana*, *Jurnal Hukum Pidana Dan Kriminologi*, 1 no 1.

⁵ Bambang Waluyo, 2011, *Victimologi: Perlindungan Korban dan Saksi*, Sinar Grafika, Jakarta, p. 9.

⁶ Atmasasmita, 1985, *Problem Kenakalan Anak/Remaja*, Armico, Bandung, hal.80; Ratri Novita Erdianti, Sholahuddin Al Fatih. *Fostering as an Alternative Sanction For Juveniles in the Perspektive of Child Protection in Indonesia*, *JILS (Journal of Indonesian legal Studies)*, 4(1):19-28.

⁷ Mulyana W Kusumah, 1989, *Kejahatan Oleh Kelompok Berusia Muda*, Kompas, 15 Juni, p. 14.

⁸ I Nyoman Ngurah Suwarnatha, 2012, *Hukum Pidana Anak dan Perlindungan Anak*, Universitas Pendidikan Nasional, Denpasar, p. 1.

enforcement often experiences obstacles and obstacles.⁹ This is because the problem of child intercourse is an anti-social act committed by humans whose perpetrators are children.

Every child who is a victim or perpetrator of sexual violence or who is in contact with the law or who is associated with child protection and all related matters must be kept confidential, and has the right to legal assistance.¹⁰ The child as a victim has believed what has been stated by the child as the main perpetrator (his girlfriend), then the act of intercourse is carried out again by the child as the victim with the child's friend as the other perpetrator in the amount of one person so that the child as the victim in this case is three people. This act of intercourse has been carried out several times by the child as the victim and the child as the same perpetrator in different places and at different times. Regarding crimes committed by children, one of them is sexual intercourse, where the crime of child intercourse is an act of sexual violence involving minors. This act is included in the form of sexual violence and can be subject to criminal sanctions as contained in the provisions of the Child Protection Law and its amendments. Legal protection for children victims of sexual violence includes criminal sanctions for perpetrators of sexual violence against children, handling trauma carried out by victims, and optimal legal protection from all forms of crime. Crimes of sexual intercourse committed by children from a criminological aspect are influenced by family factors where there is inner pressure exerted by parents on children, so that children cannot give their best to parents because of this pressure.

METHODS OF THE RESEARCH

The research method used is normative juridical research. The type of research is descriptive and analytical. The sources of legal materials used are primary legal materials and secondary legal materials and tertiary legal materials. The technique of collecting legal materials through literature study and then analyzed through description using qualitative analysis.

RESULTS AND DISCUSSION

A. Criminal Cases Committed by Children

In social life, it is not uncommon to find people who dare to commit crimes and violate the rules of law that apply in their country so that many other people become victims of these acts, what is meant as a "criminal act" is an incident where a person acts because of the impulse of lust and is not followed by reason that causes crimes to go beyond the limits, for example criminal acts that are quite massive occurring, namely sexual crimes Like having sex with a child¹¹. Deviations in behavior or unlawful acts committed by children due to the negative impact of development development and advances in science and technology, have brought fundamental social changes in people's lives that greatly affect children's values and behavior. In addition to development development, science and technology, children who lack or do not receive love and guidance from parents about the development of attitudes and behaviors, will be easily dragged into the current of society and the environment that is unhealthy and detrimental to their personal development.

⁹ Harkristuti Harkrisnowo, 2002, *Tantangan dan Agenda Hak-Hak Anak*, Newsletter Komisi Hukum Nasional, Edisi Februari, Jakarta, p. 4.

¹⁰ Nursariani dan Faisal, 2018, *Hukum Perlindungan Anak*, Pustaka Prima, Medan, p 156.

¹¹ I Putu Arya Pranata Karang, Sanksi Pidana Bagi Pelaku Kejahatan Persetubuhan Yang Dilakukan Terhadap Anak Di Wilayah Hukum Polda Bali, *Jurnal Kertha Desa* 11 no 5 (2023), p. 2347

To better understand the crimes committed by children, one of them is intercourse, where in accordance with the data obtained by the author, several cases of intercourse that have been examined and decided by the Saumlaki District Court can be briefly described, as follows: Criminal Case Number 3/Pid.Sus-Anak/2022/PN. Sml and the defendant Otis, aged 15, were charged with violating Article 81 paragraph (2) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection into Law Jo Article 76D of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, that the child at the trial had provided information that was basically as follows: That the intercourse occurred on Wednesday, September 14, 2022, Anak Koban (R), who at that time was already prohibited from meeting Anak (O), told a young child to call Anak (O) to meet the Child Victim at church. This was done by the victim's child because he was afraid of being found out by the parents of the perpetrator's child. Then after meeting the perpetrator's child at church, the grandfather of the perpetrator's child saw the victim's child with the perpetrator's child so that the victim's child and the perpetrator's child went to hide in the cave. After that, Otis' son invited the victim's son to go to Yan Fun's house, upon arrival at Yan Fun's house, the perpetrator's son told Yan Fun that the victim's son was here. Hearing this, Yan Fun said "take him home, just now the victim's son brother was looking for the victim's child". It wasn't long before the power went out so Yan Fun went out of the house. That's when the victim's child invited the perpetrator's child to enter Yan Fun's room because he was afraid of being seen by the victim's child's family who were looking for the victim's child. In the room, the victim's child initially talked about the perpetrator's child's plan to be transferred to Biak, then the perpetrator's child began to kiss the victim's child with chili sauce saying "Beta Sayang Ose". The victim's child then agreed and Child (O) began to unbutton the victim's pants and lower the perpetrator's own pants. Then the perpetrator inserted his genitals into the victim's child's genitals for 3 (three) minutes. In this Sexual Relations case, the defendant was sentenced to imprisonment for 5 (five) years and 6 (six) months in prison, and the fine was replaced by job training for 6 (six) months

B. Factors That Cause Children to Have Sexual Intercourse with Children

One of the theories in criminology that is used for factors that cause children to have sexual intercourse with children is the theory of social control. This theory explains why a person is willing to obey the law in society. Social control theory holds that violations of the law in society are the result of weak social control. On the contrary, if social control is strong enough, there will be no violations. The modernization that is taking place today as a whole can almost all affect human life. The modernization overhauled the structure of society and the norms that govern life patterns. Because of this change, a crime of intercourse committed by a child arises, in looking at a crime, factors are linked in several cases of child intercourse which can be seen from two points of view. First, subjectively, that is, looking at crime from the perspective of the person, that is, the act that is contrary to persuading the child to have intercourse with him or with another person. Article 81 paragraph (3) stipulates that in the event of a criminal act as intended in paragraph (1) committed by a parent, guardian, childminder, educator, or education personnel, the penalty shall be increased by 1/3 (one-third) of the criminal threat as intended in paragraph (1). Second, objectively, it looks at death from the point of view of the losses experienced by the community as a result of the

crime that occurred. Some criminological theories reveal the causes why crimes can occur. One of them is the biological theory that considers that talent is the main cause of the occurrence of crime. This talent is passed down by ancestors so that evil is considered an inherited behavior.

The causes of sexual intercourse cases with child victims in the Bali Regional Police Jurisdiction consist of internal factors and external factors. According to Andin Martiasari, "What is meant by internal factors is factors that come from within the perpetrator of intercourse itself who is suspected of having sexual abnormalities and is not influenced by external coercion¹²." Furthermore, external factors are factors that originate from several things that are not caused by the perpetrator's internal life, such as the lack of parental attention to the victim, environmental factors, economic factors, factors influenced by alcoholic beverages and factors of technological advancement. Internal factors that cause the perpetrator to commit sexual crimes committed against children is that the perpetrator has a sexual disorder or pedophilia. Pedophilia is a mental disorder in the form of sexual disorders owned by a person by making children as objects or instruments of the venting of their sexual desires.¹³

Other theories, such as the sociological school, consider that the factor of crime is the environment. Crime can occur due to bad environmental factors, in this condition, criminals are likened to being exposed to disease germs around them. Further developments, crime occurs not only due to talent but also influenced by the environment. If there are these two factors, talent and evil, then there will be crime. Children's research cases are associated with factors that cause children to commit criminal acts of sexual intercourse with children are factors within themselves and external factors. The factors that cause children to have intercourse according to Kartini Kartono are:¹⁴ 1) Internal Factors: Internal factors are factors that exist in the child itself that encourage the child to commit criminal acts. These driving factors can be: a) To satisfy the tendency of greed; b) Increase aggressiveness and sexual drive; c) Wrong upbringing, wrong education from parents so that children become spoiled and mentally weak; d) The desire to gather with peers and peers becomes a favorite to imitate; e) Inner conflict itself and then using irrational escape mechanisms; f) Psychological and psychiatric factors, namely abnormal psychiatric conditions of a person that can encourage them to commit crimes. For example, abnormal sexual desire, so as to have intercourse with the victim who is not aware of the self-state of the perpetrator, namely mental illness.¹⁵ 2) External Factors: External factors are factors that arise from outside the child that can encourage children to commit criminal acts. These external factors come from: a) Family Environment: Family Environment is the main factor in the formation of children's character. The family is a place where children get their first education. Parents play a very big role in shaping children's personalities and becoming role models and examples because usually children's character is formed by following the behavior of their family members. If a child is born from a harmonious family, then the child will become a child with a personality full of affection and get enough attention from his parents, but unlike a child who grows up from a broken family condition, then the child becomes less or even does not

¹² Martiasari, Andin. "Kajian Tentang Perilaku Kejahatan dan Penyimpangan Seksual dalam Sudut Pandang Sosiologis dan Hukum Positif Indonesia." *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 2, no 1 (2019): 108

¹³ Wilhelmus, Renyaan dan Ingratubun, Baharudin Saleh. "Kajian Kriminologi Terhadap Kejahatan Pedofilia di Wilayah Hukum Polres Keerom." *Jurnal Ius Publicum* 2 no 2 (2022), p. 29.

¹⁴ Kartini Kartono, 1982, *Psikologi Anak*, Bandung, Alumnus, p. 149.

¹⁵ Lukman Hakim Nainggolan, Februari, "Bentuk-Bentuk Kekerasan Seksual Terhadap Anak Di Bawah Umur", *Jurnal Equality*, 13 no 1 (2008). p. 75

get special attention from his parents. Lack of attention makes these children act according to their mindset and will as a result of the child committing actions that should not be done such as stealing, hitting, kicking and other acts of violence; b) School Environment: School is a place of formal education that has a role to develop children according to their abilities and knowledge which aims for children to learn to develop creativity, knowledge and skills. The school environment can also be a factor that affects the formation of a child's personality. School can be a factor in the formation of delinquent children if the school environment does not have inadequate facilities such as low quality of teachers, lack of discipline, less strict school regulations, and so on.

Low levels of education cause children to not have the opportunity to do useful activities. The amount of time that children have that is useful does not exist, resulting in children doing activities that they think are good and will more often join children from the same group. Parents also have an obligation to provide guidance and direction to children in choosing the place where the child will get an education. This also prevents children from having a bad influence on the school environment; c) Social Environment: The social environment has a big role in shaping children's personalities. Children's behavior in daily life can reflect how the child's daily social environment is in society. If children grow up in a good social environment, then the child's personality will be formed following a good environment as well. If children grow up in a community environment where most of them work as thieves, drug users and so on, then usually inevitably the child will imitate and be carried away by the bad habits that exist in the environment.

C. Efforts to Prevent Sexual Abuse Committed by Children

Preventive Legal Remedies: Preventive countermeasures are the initial efforts made by the police to prevent the occurrence of crimes so that it is commonly referred to as early prevention, in the context of children, pre-emptive legal remedies can be carried out by providing education and socialization to children about their rights, as well as providing an understanding of actions that can harm them. In addition, pre-emptive legal remedies can also be carried out by providing guidance and counseling to children, as well as supervising the environment where the child is located, in some cases, early advocacy can help children to get better legal protection. Early advocacy can be done by families, teachers, or other parties who have an important role in children's lives. Early advocacy can help children understand their rights, as well as provide support and assistance in dealing with legal issues. The efforts made in pre-emptive countermeasures are to instill good values/norms so that these norms are internalized in a person, even though there is an opportunity to commit a crime / violation but there is no intention to commit a crime / offense. The legal remedy in question is a legal remedy that is applied for the first time by instilling values or norms that grow and are present in society in a person so that these norms seem to be present by themselves on the awareness possessed by the person and make the person with his initial bad intentions disappear even though there is an opportunity.

Preventive Legal Measures: These preventive measures are a follow-up to the Pre-Emtif efforts which are still in the preventive stage before the crime occurs, in preventive efforts that are emphasized is to eliminate the opportunity for crime to be committed. Some examples of preventive legal remedies that are generally carried out in law enforcement are in the form of counseling on the dangers of drugs, appeals for a certain case, recommendations from the government, agencies, or authorities, prohibitions and sanctions as contained in the legislation. Preventive actions that can be taken by parents by

maximizing family functions for their members, such as protecting, educating, nurturing, and performing supervisory functions so that the association of family members is directed so that all forms of deviation can be avoided, in terms of sexual deviation (pedophilia). Preventive actions that can be taken by the community are in the form of avoiding unlawful actions, reporting unlawful actions to law enforcement officials, increasing legal awareness by reading and understanding applicable laws and regulations, and establishing good relationships with the surrounding environment to create a safe and comfortable situation. Another example, there are people who want to steal a motorcycle but the opportunity is eliminated because the motorcycles are placed in the motorcycle storage, thus the opportunity is lost and no crime occurs. So, in a preventive effort the opportunity is closed. It is indeed very reasonable if preventive efforts are prioritized because preventive efforts can be carried out by anyone without a special and economical skill, for example protecting oneself from becoming a victim of crime. In addition, preventive efforts do not need an organization or bureaucracy and moreover do not cause other access. This legal effort emphasizes the elimination of an opportunity factor that is present to commit the crime. This legal effort is a follow-up to the Pre-Emtif legal effort which is still included in the process of preventing the occurrence of a crime, namely obscenity in order to emphasize the number of criminal acts of sexual intercourse committed by children.

Repressive Legal Remedies: Repressive countermeasures are efforts made by the authorities after the occurrence of a crime such as taking action against the perpetrators according to their actions and correcting them so that they are aware that the acts committed are unlawful and detrimental to the community, so that they return to society and do not commit crimes again. Repressive efforts in law enforcement can be carried out in ways such as cracking down on violators, courts and sanctions. Responsive law enforcement theory emphasizes the importance of law enforcement that is responsive to the needs and interests of the community, in this theory, law enforcement must be able to adapt to social and economic changes that occur in society. Efforts to prevent and overcome crime are a struggle of the state and the people of Indonesia in realizing the ideals of development, namely realizing a just and prosperous society that is equally material and spiritual based on Pancasila and the Constitution of the Republic of Indonesia. The purpose of crime prevention efforts throughout Indonesia is to include human development as Indonesian society where the problem of crime is a human problem which is a social reality, which causes musabab whose essence is often poorly understood because it does not see the problem according to the true proportion. The development of increasing and decreasing the quality and quantity of crime is a relative cause, because the development in humans can be influenced by various factors to commit criminal behavior and these criminal behaviors can affect humans and their surrounding environment.

In this regard, efforts to prevent and overcome crime are needed so that human beings in social life can avoid negative influences, especially in the influence of criminal behavior and other deviations can be an effort to create a person's mental, physical and social well-being. Efforts to tackle the crime of sexual intercourse against children can be done in two ways, namely prevention and countermeasures if the crime of sexual intercourse against a child has already occurred, these efforts can be made to overcome a crime can be done by prevention efforts or in other words prevention is better than treating what has happened, in connection with this discussion means efforts to prevent the occurrence of criminal acts against children who are heinous and immoral acts. Preventive measures are sought to

reduce criminal acts, especially sexual intercourse with children and also an effort to protect children who are indeed very vulnerable to becoming victims of sexual intercourse, because children are the shooter of the nation, the next generation in the development of the nation and state.¹⁶ Children must be protected from disturbances in the form of mistreatment of children. If it is not protected, then children as a generation of the nation can experience destruction, it is more worrying that if children become victims of sexual crimes, then a child's creativity, willingness, and talent in developing thoughts and growth and development will be destroyed. Through the process of trial-and-error, so that the young generation will experience obstacles and in the end as a whole will hinder the process of regeneration of the nation. This last legal remedy takes effect after the occurrence of a criminal act. This legal remedy is explained as a legal remedy which in practice is in the form of law enforcement or the imposition of a criminal law against the perpetrator.

Repressive legal remedies according to Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning Child Protection which states that: a) Article 59 explains: 1). The Government, Regional Governments and other related state institutions have the obligation and responsibility to provide special protection to a person who is said to be a child; 2) Special Protection for children intended for children as mentioned in paragraph (1) is given to: (a). Children in emergency situations; (b). Children who are in conflict with the law; (c). Children from minority and isolated groups; (d). Children who are economically and/or sexually exploited; (e). Children who are victims of the abuse of narcotics, alcohol, psychotropics, and other addictive substances; (f). Children who are victims of pornography; (i). Children of victims of sexual crimes. b) Article 59A explains: Special Protection for children as referred to in Article 59 paragraph (1) is carried out through efforts: a) Prompt treatment, including treatment and/or rehabilitation physically, psychologically, and socially as well as prevention of diseases and other health disorders; b). Psychosocial Assistance from treatment to recovery; c). Providing protection and assistance in every judicial process.

CONCLUSION

The factor that causes children to have sexual intercourse with children in particular is the age of children who are in adolescence, which is between 14-18 years old, the psychological condition is still very unstable, resulting in children not being able to think long about the criminal acts they committed. The weakness of children's faith is able to encourage children to commit criminal acts of violence against children without any sense of guilt or sin in children. Associations have a great influence on children's behavior patterns and the role of the victim strongly encourages children to commit sexual acts through the way the victim dresses, speaks, or temptations. Lack of parental supervision is a loophole for children in committing the crime of sexual intercourse. And efforts to overcome the crime of sexual intercourse committed against children are preventive actions in a non-penal way, namely seeking to know oneself and instill confidence in oneself by channeling positive activities in filling free time as well as with counseling to the community and schools to maintain and pay attention to one's activities or behavior so that they do not deviate. Refractory actions by penal means from the above cases that have been decided and received punishment means actions taken by law enforcement officials after the occurrence of a crime or criminal act, including by imposing sanctions or criminal penalties.

¹⁶ Rena Yulia, 2010, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan*, Graha, Yogyakarta, p. 30.

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