


Legal Protection for Child Defendants in Sexual Violence Cases

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Abstract

Introduction: This research discusses legal protection aimed at child defendants, especially in cases of sexual violence committed against minors. This is based on a case study in Decision Number 13/Pid.Sus-Anak/2023/PNBPP and Decision Number 3/Pid.Sus-Anak/2023/PNBPP.

Purposes of the Research: This research focuses on the stages or steps in the application of the law that protects the rights of child defendants with reference to Law Number 11 of 2012 concerning the Child Criminal Justice System.

Methods of the Research: This research was conducted with a normative method in the form of a case study to evaluate the steps in the judiciary by starting with the arrest, investigation, prosecution, and conclusion with the welfare of children affected by the crime of sexual violence.

Findings of the Research: The results of the study found that, although the criminal threat against perpetrators of sexual violence is quite severe, the implementation of punishment for children of sexual violence still prioritizes the principle of restorative justice, taking into account the psychological and social aspects of children. In both of the decisions analyzed, the child defendant received a prison sentence of different durations, and was required to undergo job training as part of the rehabilitation process. Legal protection for child defendants remains indispensable and plays an important role in guaranteeing the rights of every child as well as providing a deterrent effect in cases of sexual violence.

Keywords: Legal Protection; Sexual Violence; Juvenile Justice System; Restorative Justice.

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INTRODUCTION

The young generation is an asset of the nation that determines the direction of the country's development. Therefore, children have the right to protection, education, and supervision to ensure their well-being and future¹. However, the increasing flow of globalization has a negative impact, one of which is the rampant sexual violence against children. This violence includes many forms, from sexual exploitation to the creation and distribution of child pornography content.² According to the World Health Organization (WHO), sexual violence against children can cause physical, psychological, and emotional impacts that hinder their growth and development³.

Based on data from the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia in 2023, there were 21,090 cases of sexual violence against women and 6,411 cases involving girls aged 13 to 17 years, with nearly a thousand cases occurring in East Kalimantan. The state has regulated legal protection for children through Law Number 23 of 2004 concerning Child Protection, which includes a maximum penalty of 15 years in

¹ Anastasya, H. Kajian Hukum Tentang Tindak Kekerasan Seksual Terhadap Anak Di Indonesia. *Lex Crimen*, (2015): 4(1).

² Justicia, R. Program underwear rules untuk mencegah kekerasan seksual pada anak usia dini. *Jurnal Pendidikan Usia Dini*, 9(2) (2015):217-232.

³ Ningsih, E.S., Hennyanti, S. Kekerasan Seksual Pada Anak di Kabupaten Karawang. *Midwife Journal* (2018) 4(2).

prison for perpetrators of sexual violence against children.⁴ Decision Number: 13/Pid.Sus-Anak/2023/PNBPP revealed a case of sexual violence experienced by a 13-year-old child with evidence of physical injuries. Meanwhile, Decision Number: 3/Pid.Sus-Anak/2023/PNBPP involved a 17-year-old victim who was forced to have sexual intercourse 18 times. The judge sentenced the child defendant to imprisonment and job training at the Special Children's Development Institution and the Social Service.

This research focuses on the legal protection of child defendants in sexual violence cases, which distinguishes it from previous studies, such as the analysis of social worker interventions in cases of violence against children and legal considerations in the death penalty for perpetrators of sexual violence against children. Therefore, this study has significance in exploring how the legal system handles child defendants in sexual violence cases.

METHODS OF THE RESEARCH

This research focuses on court decisions related to the crime of sexual violence against children, especially Decision Number 13/Pid.Sus-Anak/2023/PNBPP and Decision Number 3/Pid.Sus-Anak/2023/PNBPP. The child defendant was submitted to trial with charges based on Article 81 Paragraph (1), Article 82, and Article 64 of the Criminal Code, and considered the provisions of Law Number 11 of 2012 concerning the Child Criminal Justice System. This verdict sentenced child A to eight months in prison at the Samarinda Class II Special Children's Development Institution, followed by job training for one month and 15 days at the Balikpapan City Social Service. Meanwhile, child B was sentenced to one year and six months in prison at the Class II Special Children's Development Institution in Samarinda and three months of job training at the same location. The method used in this study is a normative approach with legal analysis techniques through a *conceptual approach*, a case approach, and a statute *approach*.

RESULTS AND DISCUSSION

A. Legal Protection for Child Defendants in Decision Number: 13/Pid.Sus-Anak/2023/PNBPP and Decision Number: 3/Pid.Sus-Anak/2023/PNBPP

The government has issued various laws and regulations to deal with sexual crimes against children. However, the effectiveness of the regulation in providing punishments that cause a deterrent effect is still questionable. Children, as vulnerable individuals and easily influenced by the environment, are often victims and perpetrators in legal cases, so they need optimal legal protection.⁵ The subject studied was the child defendant in two court decisions, namely Decision 13/Pid.Sus-Anak/2023/PN Bpp and Decision 3/Pid.Sus-Anak/2023/PN Bpp. In the first case, the child defendant was involved in the crime of sexual violence against a child, while in the second case, the defendant committed child abuse. This study analyzes how legal protection is provided to child defendants in the justice system as well as the effectiveness of policies implemented to guarantee their rights.

Based on the results of the analysis, it was found that there were differences in formulation in the two rulings related to the treatment of child defendants, which can be summarized as follows: Differences in the Demands of the Public Prosecutor (JPU).

⁴ Makarao, M.T., Wenny, B., & Syaiful, A. *Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga*, (Jakarta: Rineka Cipta: 2013).

⁵ Gosita, A. *Masalah Perlindungan Anak*, (Jakarta: Sinar Grafika, 1992).

Although both decisions are based on Article 81 Paragraph (1) of the Child Protection Law, there are differences in the demands filed by the prosecutor in each decision. This shows that there is a different approach in the legal process against the two child defendants.

The judge's consideration in imposing the sentence in Decision 13/Pid.Sus-Anak/2023/PNBPP, that there is no legal reason that can remove the defendant's criminal liability. Based on Article 71 Paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the penalties given are cumulative, consisting of prison sentences and fines. However, in accordance with Article 78 of the same law, criminal fines can be replaced by job training. The judge considered that this decision was in line with the principle of restorative justice which aims to foster children, not solely punish them. Meanwhile, in Decision Number: 3/Pid.Sus-Anak/2023/PNBPP, the judge considered the age of the defendant who was still 16 years old and the testimony from the defendant's brother who hoped that the legal process could have a positive impact on the child. However, the judge still held that there was no justification or excuse that could absolve the defendant from criminal liability. Therefore, the sentence is still imposed even with mitigating factors in mind.

Negligence in maintaining the confidentiality of the child's identity One of the shortcomings in both decisions is the lack of protection for the identity of the child defendant. Based on Article 3 jo Article 19 of Law Number 11 of 2012, the identity of children involved in the criminal justice system should be kept secret to avoid negative social, psychological, and physical impacts. However, in both of these rulings, there was negligence in ensuring the confidentiality of the defendant's identity, which risked creating social stigma for the child.⁶ Overall, the differences in the formulation of these rulings reflect variations in legal considerations of similar cases. In addition, the aspect of child protection in the criminal justice system still needs more attention, especially in maintaining children's identities so that it does not have a bad impact on their future.

Legal protection for child defendants is divided into two main categories, according to Philipus M. Hadjon, namely preventive and repressive. Preventive protection aims to prevent violations of the law before it occurs, such as through legal education and socialization for children as well as supervision by families and educational institutions. Meanwhile, repressive protection is applied after a violation of the law, including the judicial process, legal assistance, and the provision of sanctions such as criminal or job training for the rehabilitation of the perpetrator, in cases tried in Decision Number: 13/Pid.Sus-Anak/2023/PNBPP and Decision Number: 3/Pid.Sus-Anak/2023/PNBPP, the laws applied include Law Number 35 of 2014 concerning Child Protection and Law Number 12 of 2022 concerning Violent Crimes Sexual. These two rulings affirm protection for victims and rehabilitation efforts for perpetrators through sanctions such as prison sentences and job training.

Decision Number: 13/Pid.Sus-Anak/2023/PNBPP stipulates a sentence of one year in prison and three months of job training for child defendants, with legal assistance and education for the community as part of preventive efforts. Meanwhile, Decision Number: 3/Pid.Sus-Anak/2023/PNBPP sentenced him to one year and ten months in prison and three months of job training. Both rulings emphasize the importance of protecting children's rights in the legal process as well as rehabilitation to prevent the recurrence of criminal acts.

⁶ Septian Tedi Prasianto, "Implementasi Pasal 64 Undang – Undang Nomor 35 Tahun 2014 tentang Identitas Anak sebagai pelaku Kriminal Yang Tidak Dirahasiakan Oleh Pers," *Jurnal Novum* 05 No. 02 (2018) : 2442-4641.

The legal process against child defendants is carried out by considering aspects of child protection, including legal assistance, separation from adult prisoners, and educational approaches in the rehabilitation of perpetrators. This aims to uphold justice while ensuring that children's growth and development are maintained even though they have committed violations of the law, in the case of Decision Number: 13/Pid.Sus-Anak/2023/PNBPP, the child defendant underwent various stages of detention from August 3, 2023 to September 8, 2023, both by the Public Prosecutor and the Balikpapan District Court Judge, with several suspensions. Meanwhile, in Decision Number: 3/Pid.Sus-Anak/2023/PNBPP, the child defendant was detained at the State Detention Center from February 20, 2023 to March 16, 2023 with the assistance of legal counsel and family. The chronology of the case Decision Number: 3/Pid.Sus-Anak/2023/PNBPP began with the defendant's introduction to the victim on January 1, 2022, which developed into a courtship relationship. On February 1, 2022, the victim visited the defendant's house, then was given a drink until he felt weak and dizzy. In this condition, the defendant committed sexual violence against the victim.

The stages of law enforcement and child protection, namely: 1) Arrest and Detention: The arrest of children as suspects must be carried out in accordance with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, with a maximum time of 24 hours. Children must be placed in special facilities such as Social Welfare Institutions or Temporary Child Placement Institutions if there is no special space available in the place of detention. 2) Investigation: In the investigation stage, investigators are required to ask for advice from community supervisors and present findings within a maximum of three days. Detention by investigators can be carried out for seven days and extended with the approval of the Public Prosecutor. 3) Prosecution: In accordance with Article 42 of Law Number 11 of 2012, the Public Prosecutor has the obligation to carry out diversion efforts within seven days of receiving the investigation file. 4) Trial: The judge or panel of Juvenile Judges must be appointed within three days after the file is received and transfer within seven days. 5) Coaching: Children who are sentenced will be placed in a Special Children's Development Institution to receive guidance and training according to the provisions. Child defendants in cases of sexual violence against children continue to receive legal protection in accordance with Law Number 11 of 2012. The main purpose of the juvenile criminal justice system is to provide opportunities for children to take responsibility for their actions and receive guidance so that they can return to being part of society.

B. Form of Legal Protection for Child Defendants in Decision Number: 13/Pid.Sus-Anak/2023/PNBPP and Decision Number: 3/Pid.Sus-Anak/2023/PNBPP

Legal protection in the context of the protection of human rights is related to the prevention of harm to other individuals and the protection of society so that it remains in harmony with the rights guaranteed by law. The main goal of legal protection is to safeguard the future of the younger generation, especially minors, through the implementation of established regulations. This is important because children are part of a society that still experiences limitations in physical and mental development, so they need special protection. Based on Decision Number: 13/Pid.Sus-Anak/2023/PNBPP and Decision Number: 3/Pid.Sus-Anak/2023/PNBPP, legal protection for children in cases of sexual violence must be guided by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The legal process, from investigation to coaching, must take into account the needs of the child, including the use of easy-to-understand language and the assistance of legal counsel to create a safe and comfortable environment.

However, there is a conflict of law in its implementation, where the main purpose of the law is rehabilitation, but the punishment given still tends to be punitive. To avoid this, the justice system needs to focus more on rehabilitation by providing adequate coaching programs. In addition, clear national guidelines are needed for judges in handling child cases, especially in cases of sexual violence, to ensure the fair application of the law. Collaboration between courts, child development institutions, and community organizations is also important so that children who are facing the law continue to receive protection according to their rights.

CONCLUSION

The child defendants in both cases are protected by Law Number 11 of 2012 concerning the Child Criminal Justice System, which guarantees their rights from the detention stage to coaching. The two verdicts follow the same procedure based on the Law, with the punishment given in the form of imprisonment and job training of 8 months in prison and 1 month and 15 days of training in Decision Number: 13/Pid.Sus-Anak/2023/PNBPP, as well as 1 year and 6 months in prison and 3 months of training in Decision Number: 3/Pid.Sus-Anak/2023/PNBPP. Prison sentences for child defendants are considered inappropriate because they can have a negative impact on their psychology and education. Therefore, more comprehensive legal protections, including rehabilitation and psychological rehabilitation, need to be implemented so that they can return to being productive individuals in society. The judge had considered the age and rights of the child defendant in his ruling, adding job training as part of rehabilitation. This decision was taken taking into account the guidance of professionals such as psychologists and social workers to ensure support for the defendant after the legal process.

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Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest,

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