

Legal Review of Sexual Violence Against Children (Analysis of Decision Number 243 K/Pid.Sus/2020)

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Abstract

The Indonesian nation is a nation that highly respects Human Rights because children are the generation that will continue the principles of Indonesian nation, all citizens, even those created by God as state assets that cannot be separated from their elements and must be protected by their rights. But in reality, children are victims of a lot of sexual violence. Thus, the Indonesian government is very concerned about it in its efforts to address this social problem. Children who experience sexual abuse need extra care because they are still developing members of society both physically and psychologically. Children in Law No. 35 of 2014 is a promising law that is expected to overcome the problem of sexual violence against children. In the home environment in particular, parents are expected to take care of their children. But in reality, parents are the ones who commit sexual violence.

Keywords: Children, Parents, Sexual Violence

Introduction

Children are an inseparable part of the continuity of life within society because they have rights just like adults. Indonesia is a nation that values and strongly supports human rights (HAM), including children's rights, which are enshrined in the country's regulations. These rights are further reinforced by the international agreement on children's freedom through Presidential Decree No. 36 of 1990, which ratified the Convention on the Rights of the Child. (Soeponyono 2020)

From infancy to childhood is a period filled with happiness and innocence, where dreams and aspirations should flourish. However, the reality in Indonesia today does not meet these expectations, as there are still many cases of violence and unfair treatment within society, which disrupt children's happiness and confront them with harsh realities. Children who experience violence and abuse are forced to think and act beyond their age. They are often involved as victims of crime, subjected to injustice, poverty, epidemics, and, most notably, sexual violence. The responsibility to fight for children's inherent rights is reflected in the government's duties and functions. Children are vital resources for any community and represent an investment in the nation's progress. (Dasyfamudi 2022)



Human rights are violated when sexual violence against children occurs, especially when their freedoms are infringed upon. The prevalence of sexual violence cases is often caused by a lack of attention and protection for children, as well as inadequate care from parents. (Ivo Noviana 2018)

When a child engages in sexual activity before reaching the legal age, child sexual violence generally refers to any sexual activity occurring before the child reaches the age limit. This typically involves sexual activities where an adult, another child, or someone who is expected to know more than the child uses the child for sexual gratification. (Nyoman Mas Aryani 2017)

Today, sexual violence against children is often perpetrated by individuals within their surroundings. In cases where parents, who are supposed to be educators and protectors, become involved as perpetrators of sexual violence, the issue becomes grave, as it severely impacts children's physical and mental well-being and jeopardizes their future. (Arif, Law Enforcement Against Widespread Extortion Practices in Medan City 2022)

Judges are obliged to carefully consider sentencing decisions as part of their role in upholding justice, ensuring that society's concerns regarding the leniency of punishments are addressed. Therefore, judges must exercise sound judgment and discretion when determining the severity of the punishment. (Koes Irianto 2013)

Method

In this study, the author employs the Normative Legal Research method (S. A. Batubara, Legal Protection for Patients in Medical Services at General Hospitals, 2020). Normative Legal Research is an activity that examines aspects related to resolving internal issues within positive law (Arif 2021). The normative legal research method uses the Normative Juridical approach. The type of research tendency used by the author is descriptive (Rodiatun 2017). The descriptive nature of the research in this thesis means that it is based on actual guidelines or facts.

Enforcement of Law Against Perpetrators of Sexual Violence Against Children within the Household Scope

Enforcement refers to the actions taken by the authorities to uphold the law within their jurisdiction, commonly known as law enforcement. Criminal law enforcement begins with the arrest of the perpetrator, followed by investigation, detainment of the defendant, and imprisonment, even when the crime is clearly identified. However, the identification of the crime alone is not enough to prosecute the perpetrator. Another element, subjective guilt, must also be fulfilled, meaning the person responsible for the crime must be held accountable for their actions. The current law enforcement ideology in Indonesia is based on legal strategies. (Kartika Sari, 2023)

The idea that the law can be flexibly used to combat crimes and violations in specific situations forms the theoretical basis for the relationship between law enforcement and the application of criminal law. Law enforcement involves several authoritative institutions,



including the police, prosecutors, courts, correctional institutions, and legal advisors. (Adawiyah 2024)

Legal Efforts as a Means to Protect and Restore Children's Freedom Based on Law No. 35 of 2014

Sexual violence against children should not only be addressed by punishing the perpetrator but also by strengthening children's protection from harm in the present context. The state must carefully consider adequate protection concepts for children from all forms of sexual violence. Every child has the right to freedom, guaranteed by the government through fundamental regulations aimed at protecting children from discrimination and violence. Due to their limited self-defense capacity, children need protection to live peacefully. (Zulkifli et al., 2022).

Many discussions have been held regarding the principles of legal protection in Indonesia. However, there are obstacles to systematically and comprehensively implementing these principles. If legal protection principles are properly applied, public health could be improved in a manner that is understandable, and society would benefit from them gratefully. As citizens, children have different freedoms from general human rights, such as the freedom to grow, to be free from discrimination, injustice, and the ability to socialize with others and express their views in society. Therefore, the provisions for their protection include freedoms for children who are victims of immoral crimes, including:

- a. The right to rehabilitation for recovery;
- b. The right to maintain confidentiality from the media;
- c. The right to safety when providing testimony as a victim or expert witness;
- d. The right to information on the progress of the case being processed.

Furthermore, Article 1, paragraph 2 of Law No. 35 of 2014 explains that protection involves all activities that promise the protection of children's rights, enabling them to live safely, grow, and develop mentally, and allowing them to socialize optimally while being protected from all threats, especially those from within their own families. The family should be a source of happiness and comfort for children, where parents guide and protect them, particularly from crimes that may endanger their health. However, in the current era, children often do not receive such protection within their families. Rather than being a place of defense, families sometimes become the source of harm to children's futures, as family members may be involved in heinous acts such as sexual abuse. Protecting society, including the most vulnerable, is a fundamental goal of law. (Ramadhan, 2023)

Through Regulation No. 35 of 2014, Article 76C, amending Law No. 23 of 2002 on Child Protection, it is stated: "No one shall place, neglect, command, or practice violence on children." Sexual misconduct within the family is a grievous immoral act, deeply traumatizing for the child, especially when the perpetrator is a family member. This trauma often leads children to withdraw from their surroundings, hindering their ability to socialize and disrupting their education. Proper planning is essential to ensure children can contribute to the nation's growth. (Cindy et al., 2021)



Several guarantees exist to protect children from sexual violence, such as:

- a. Article 28B, paragraph 2 of the 1945 Constitution, which guarantees the right to life, growth, development, and protection for all humans;
- b. Article 241, paragraph 1 of the Criminal Code (KUHP), which imposes a seven-year prison sentence for acts of lewdness committed against children, step-siblings, adopted children, or those under age;
- c. Article 81, paragraph 1 of Law No. 23 of 2002 on Child Protection, which states that anyone who forces a child to engage in immoral acts will be sentenced to a maximum of 15 years imprisonment or a minimum of 3 years imprisonment, along with fines between Rp 60,000,000 and Rp 300,000,000;
- d. Law No. 23 of 2004 on the Elimination of Domestic Violence, which addresses the prevention and minimization of immoral acts within the household.

The existence of comprehensive regulations is perceived as a way to ensure justice, focusing on solutions that provide deterrence. (Berutu et al., 2024)

Judge Considerations in Sentencing Perpetrators in Decision No. 243 K/Pid.Sus/2020

In Indonesia, law enforcement officers, particularly judges, play a key role in determining criminal sentences for perpetrators of violence, especially sexual violence against children within families. This authority is granted by the Criminal Code (KUHP) under Article 12, letter (a). The discretion to impose varying sentences for similar offenses (same offense) or for comparably serious offenses (offense of comparable seriousness) highlights the need for accurate evidence and reasoning. (Muharram, Nimerodi Gulo, and Ade Kurniawan, 2018)

A judge's considerations are the final step in court proceedings, allowing them to deliver accurate decisions and appropriate sanctions for the perpetrator's actions. Judges must carefully study the alleged legal events, examine evidence, witnesses, and expert opinions, and apply a thorough interpretation to ensure justice in society. To achieve justice, it must be interpreted comprehensively. (Syach et al. 2011)

The author is interested in analyzing the judge's evaluation in Decision No. 243 K/Pid.Sus/2020, issued by the Supreme Court. The case involved the defendant, Aman Bin Kaderim, who, in August 2018, at around 6:00 AM, sexually assaulted his stepdaughter while she was tidying up his bedroom. The abuse occurred repeatedly until 2019, resulting in the victim's pregnancy and severe psychological trauma. Based on the forensic examination results, the cause of her pregnancy was confirmed. The defendant did not deny the allegations and was found guilty of violating Article 285 of the Criminal Code in conjunction with Article 65, paragraph 1 of the Criminal Code and Article 46 of Law No. 23 of 2004 on the Elimination of Domestic Violence.

After careful analysis, the author concludes that the judges in the lower courts and the Supreme Court provided a fair and just legal process, fulfilling the legal protection of the child in accordance with applicable regulations. The sentence handed down—a 12-year prison term—



reflects the gravity of the crime and serves as a warning to society to prevent violence in any form.

The judges' decision, based on a thorough examination of the facts and available evidence, demonstrated a clear commitment to upholding justice and protecting the rights of the victim. The punishment imposed was appropriate given the severity of the crime and the significant psychological trauma experienced by the victim. This decision also aligns with the legal framework and objectives of the Indonesian legal system in addressing crimes of sexual violence, particularly within the family context.

Conclusion

The criminal sanctions imposed on the perpetrator in Decision No. 243 K/Pid.Sus/2020 at the Supreme Court level were based on violations of Article 285 in conjunction with Article 65, paragraph 1 of the Criminal Code, and Article 46 of Law No. 23 of 2004 on the Elimination of Domestic Violence. The perpetrator was rightfully held accountable for his criminal actions under the supremacy of the law based on the violated articles. Judge considerations, observed from the trial proceedings from the first court level to the cassation appeal filed by the perpetrator, led to the imposition of a 12-year prison sentence for his deviant behavior. In this case, the judge acted justly in punishing the sexual violence perpetrator, as reflected in the final decision.

Recommendations

Based on the research findings, the author proposes that judges should impose the maximum punishment for defendants found guilty of committing sexual abuse against children. Judges must thoroughly consider all aspects of the case, guided by legal certainty, utility, and fairness, to achieve real justice for all parties involved. It is important to take into account the negative impact on the psychological well-being of child victims. Given the increasing number of child-related crimes in Indonesia, this should be a crucial factor in determining the maximum sentence. Additionally, the prevention of sexual abuse against children is a shared responsibility between the government, law enforcement, parents, and the community. Therefore, the most important focus, according to the author, is to emphasize strong moral and religious education for every individual and to protect children from harmful influences in their environment.

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