

Application of Law No. 35 of 2014 on Criminal Acts of Sexual Violence Involving Children

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Abstract

The focus of this research is on criminal acts of sexual violence involving children as perpetrators and victims. The main problem in this study, namely the application of Law 35 of 2014 in the criminal act of sexual violence involving children as perpetrators and victims in PN Sungguminasa. The type of research used is Field Qualitative Research or field research, with a statutory and sociological approach. The source of this research data was obtained by observation, interview, and document review methods. Data processing techniques are carried out by pumping data, then processing qualitatively and described by explaining, deciphering, or providing an overview of the subject matter. Based on the results of the study, it is known that the application of Law No. 35 of 2014 in cases of sexual violence involving children in PN Sugguminasa has been implemented by the provisions in the legislation. Child perpetrators or victims have been given protection by applicable regulations. As for if there is a later discrepancy between the provisions in the law and its application, then it is based on the decision of the court with various considerations.

Keywords: Sexual Violence, Child, Perpetrator, Victim, Criminal Act, Law Enforcement

Introduction

Crimes related to seclusion are called criminal acts of decency. Good manners, customs, norms, and manners have always been associated with this criminal act. This corresponds to the basic meaning of the word "smile", which means civility, courtesy, courtesy, and good customs. Based on this definition, the criminal act of decency is a criminal offense related to norms, customs, or manners (Romli, 1983).

In his journal, Lobby Lukman divides crimes of decency into two categories: crimes related to sex and crimes not related to sex. Categories of sexual decency crimes related to sex are known in society such as prostitution, homosexuality, rape, fornication, lesbianism, and others (Wijaya & Ananta, 2022). This is also by the types of moral crimes contained in articles 281 to 303 of the Criminal Code discussing sexuality when discussing moral crimes (Tuliah, 2018);(Yuniantoro, 2018);(Perempuan, 2020). In modern times, there have been many cases of moral crimes. Even worse is that this crime of decency involves not only adults but also children (Catahu Perempuan, 2021);(Lewoleba & Fahrozi, 2020). This involvement not only makes children victims but also involves children as perpetrators of moral crimes (Noviana, 2015).

How to cite:	Fachria Muntihani (2024) Application of Law No. 35 of 2014 on Criminal Acts of Sexual Violence Involving Children, (5) 4
E-ISSN:	2722-5356
Published by:	Ridwan Institute

The Child Protection Commission in Indonesia recorded that 42-58% of cases involving children were cases of sexual violence that occurred in 2010-2014. From January to April 2014, there were 600 cases of sexual violence 137 cases of which were committed by children. In addition to data from KPAI. Another thing is that some time ago the media reported on a sexual violence case involving a girl with the initials YY (13 years old) who died after being raped by 14 young men after school. According to media reports, eight of the perpetrators were minors ranging in age from 9 to 14.

The next case of sexual assault occurred in a girl whose perpetrators stuffed hoe handles on the victim's genitals (Dania, 2020). The perpetrators of sexual violence were three people, one of whom was 15 years old. Furthermore, according to the results of the investigation of violence cases that occurred in East Java, precisely in Kediri, there were 17 children reported to have been victims of rape with the motive of giving anti-pregnancy drugs and adult spectacle (Oktaviani, 2020);(NS & Gunawan, 2021).

Another case is sexual violence that occurred in Gowa Regency, more precisely in Kalebarendeng village, Bontonompo district. The perpetrators were five children aged 12 to 14 years, and the victims were children aged 12 years. Then in 2017, precisely in May, there was another case of sexual violence in which the perpetrator and victim were 14-year-old children.

Based on the explanation of some of the cases above, we understand that children who are the successors of the nation are even targeted by crime or worse become perpetrators of frightening crimes. Related to this phenomenon, the government should protect children who are victims of crime and provide assistance to children who become perpetrators. Assistance for child perpetrators, especially children of sexual violence perpetrators, is to provide understanding and teaching to the child that the actions committed are wrong. The provision of this assistance is also expected so that child perpetrators do not repeat their crimes as adults (Lestari Pradana, 2020).

The government has protected children in several regulations. Among these regulations are Law No. 4 of 1979 concerning Child Welfare, Presidential Decree of the Republic of Indonesia No. 77 of 2003 concerning the Indonesian Child Protection Commission, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Law No. 35 of 2014 amendments to Law No. 35 of 2014 concerning Child Protection. The entirety of this law serves to protect children from all forms of inhuman acts that result in human rights violations. This includes if the children are involved in the law, either as victims, witnesses, or suspects.

The description above provides an explanation that the state has affirmed through the Law regarding the proper treatment of children. However, the reality also shows that the treatment of violence against children from day to day is increasing with various motives, especially sexual violence. This reality is certainly a big question because there is a gap between the expectations that the existence of the Law wants to create and real events in society. This makes it possible to research the implementation of the law in question so that solutions can be found to prevent and reduce the occurrence of sexual violence cases involving children in the future.

Based on the description above, the author considers that it is important to make research related to the problem of sexual violence in children. For this reason, the author raises the formulation of the problem, namely How to apply Law No. 35 of 2014 in the criminal act of sexual violence involving children as perpetrators and victims in PN Sungguminasa.

The objectives of this study are to: Reveal the application of Law No. 35 of 2014 in cases of sexual violence involving children as perpetrators and victims. This research is expected to contribute insight and knowledge in the field of legal science, especially Criminal and Constitutional Law. As well as increasing public knowledge about the issue of child protection from sexual violence.

Research Methods

This type of research is qualitative research with descriptive analysis. According to Bogdan and Tylor, qualitative research is research that deals with descriptive data in the form of written or unwritten words obtained from people or observed behavior. Descriptive analysis means analysis that provides an overview of the problem under study. This qualitative research is carried out by searching, collecting, and processing data, both oral and written with descriptive analysis methods that aim to provide an accurate picture of the problem under study.

The location of this research is in the Sungguminasa District Court because the legal process that occurs is more to law enforcement who are involved in solving problems in the Court. The approach in this study is directed to reveal the mindset used by researchers in analyzing their targets or in other expressions the approach is a scientific discipline that is used as a reference in analyzing the object under study by the logic of science. The research approach is usually adapted to the research profession but does not rule out the possibility of researchers using multi-disciplinary. This research uses three types of approaches, namely: a) Legislative Approach, and b) Sociological Approach.

The Legislative Approach is an approach that is stiffened by examining the rules related to the problems being examined. This legislative approach, for example, examines the compatibility of one law with another or the law with a problem. This research uses a sociological approach because in the end this research is used to find out how the law is implemented including the law enforcement process. The Normative Theological Approach is an approach that views religion in terms of its basic and original teachings of God.

Primary Data is data obtained directly from the main source, namely from the results of interviews regarding the implementation of the Law. The sources of information from this study are the parties involved either directly or indirectly. The direct source of information referred to in this study is people who carry out directly the implementation of Law no. 23 of 2002 concerning child protection in cases of sexual violence involving children, namely juvenile judges:

The juvenile judge is the judge who adjudicates the case and determines the sentence given. The researcher intends to find out the judge's consideration in handling

down the verdict. The juvenile judges who became informants of the researcher were 2 juvenile judges. Secondary data are data obtained from official documents, books, research results, and other literature that provide additional information about research subjects.

The data collection methods used in this study are 1) Observation. 2) Interview or interview. 3) Review documents. Research instruments are one of the most important elements in research because they function as tools or means of data collection. Thus, the instrument must be relevant to the problem and aspects to be studied, to obtain accurate data. The research instruments used include interview guidelines, stationery, and documentation tools.

This research is qualitative so the data obtained, both primary and secondary data will be collected first and then processed qualitatively and then will be described either by explaining, describing, or providing an overview of the problem that is closely related to the problem under study. In the end, conclusions will be made based on the analysis that has been carried out.

Testing the validity of data can be seen by linking the problem formulation with answers or interview results, as well as written data in the form of court decisions. In qualitative research, findings or data can be declared valid if there is no difference between what is reported by the researcher and what happens to the object under study. But please note that the truth of the reality of data according to qualitative research is not singular, but plural and depends on human construction, formed in a person as a result of the mental processes of each individual with various backgrounds.

Results and Discussion

A. Rule of Law Regarding Child Protection in Indonesia

The government's attention to human rights, especially the protection of children, has been established. This is marked by the creation of laws that protect children or the renewal of existing laws. In addition, the government has created a special institution to protect children. Agencies that intersect with children's problems also apply special things in dealing with children's problems.

Legal protection of children is legal protection provided to protect and guarantee children's rights. This protection is provided so that children get the rights they deserve in various conditions. This concept has been understood by law enforcers, especially by Juvenile Judges. According to Amiruddin, one of the juvenile judges of the Sungguminasa District Court, child protection aims to protect children from actions that harm children committed by adults. This explains that legal protection for children exists to provide and protect children's rights from things that can harm children who are carried out by adults.

In line with the explanation given by Amiruddin, Yulianti also said that everything related to children must be protected, especially if it is a child's right. Children must indeed be given optimal protection. This protection will keep children's rights fulfilled so that children can grow and develop properly. The legal rules

regarding child protection in Indonesia are contained in Law No. 35 of 2014 which was later updated to Law No. 35 of 2014 concerning child protection. This law regulates all matters related to children, both rights, obligations, and all matters concerning children. Yulianti explained that child protection is carried out by everyone, be it family, community, or government.

This opinion is by what is stated in Law No. 35 of 2014 concerning child protection which explains that every element of society must participate in protecting children. This shows that child protection is not only the responsibility of parents but also the responsibility of the government and society. Related to the explanation above, Amiruddin further explained that protection for children is carried out by every circle of society, and the form of each protection provided is different according to the position of the community. In the child protection law, it has been explained the form of protection provided.

The explanation is contained in articles 20 to 26 which contain the role of each family, community government, and state in protecting children. For children who face the law, this is reaffirmed in Article 64 paragraph 1 which reads "Special protection for children who face the law as referred to in Article 59 includes children who conflict with the law and children victims of criminal acts, is the obligation and responsibility of the government and society". This, it known that everyone or the community is obliged to protect children. Protection of children is provided according to their respective abilities or by the rules stated in the child protection law.

B. Application of Law No. 35 of 2014 on Sexual Violence Involving Children as Perpetrators and Victims in PN Sungguminasa

An example of the application of Law No. 35 of 2014 related to sexual violence cases involving children, both as perpetrators and victims, is illustrated in decision No. 08/Pid.Sus/2017/PN.Sgm. The decision shows how the court implements child protection provisions by the law in handling sexual violence cases. The perpetrator and victim in this crime were a 14-year-old child, while the victim was a 12-year-old child. In an interview that the author conducted, Amiruddin explained the verdict regarding lewd acts that fall under sexual violence.

It has been explained earlier that children must be given protection and treated specially. Protection of children as perpetrators of criminal acts is carried out by the provisions in the article that children must be treated humanely according to their dignity and dignity. Based on the interview that the author has conducted with Yulianti, it is known that one form of protection for children according to article 64 is the imposition of sanctions for children as perpetrators of sexual violence must be fixed.

The imposition of this sanction is recorded in Article 64 letter f "Avoidance of imposition of the death penalty and/or life imprisonment" and g "evasion from arrest, detention or imprisonment, except as a last resort and for a short time". Article 16 has further clarified the imposition of sanctions: "Arrest, detention, or

imprisonment of children shall only be carried out by applicable law and may only be carried out as a last resort”.

Yulianti further explained that in making decisions, judges must consider the interests of children as perpetrators of crimes and strive for punishment in the form of coaching. Amiruddin explained that if a child is sentenced to prison, it is because the child perpetrator has committed his actions repeatedly or the child perpetrator has received a previous sentence.

Based on this explanation, it is known that the rule that says there is no prison sentence for child offenders is not absolute because if the child offender has committed crimes repeatedly, the perpetrator will be sentenced to prison. Decision No. 08/Pid.Sus/2017/PN.Sgm sentenced the child offender to 1 year and 8 months imprisonment, with additional job training at LPKA Maros for 6 months. This punishment is based on the judge's judgment, including the offender's repeated behavior. Prison is given for a deterrent effect, while job training is expected to improve the mindset and behavior of children. The end goal is to guide the child to choose good behavior.

Article 17 states that the identity of the child who is the victim or perpetrator of sexual violence must be kept secret. According to Amiruddin and Yulianti, if the identity of the victim or perpetrator is revealed, labeling may occur, causing prolonged trauma and mental disorders. Related to the issue of keeping the identity of perpetrators and victims confidential, one form of confidentiality of the identities of perpetrators and victims carried out by the court is in the verdict entered on the web that can be accessed by the public not written the names of victims and perpetrators.

In the author's intended ruling, the perpetrator's name was changed to child and the victim became the victim's witness. Based on the explanation given, the author can assume that the confidentiality of the identities of perpetrators and victims of sexual violence is very maintained. This is evidenced by the absence of the identities of the accused and victims in the verdict that can be freely accessed by the public. Article 18 provides for legal aid and rehabilitation.

Legal assistance in the form of an advocate is provided to the child offender if desired, or if the perpetrator already has his advocate, it is also allowed. The court only provides information that the child offender must be accompanied by an advocate and the decision of who accompanies the child offender back. For example, in decision 08/Pid.Sus/2017/PN.Sgm, the perpetrator was accompanied by advocates Nurzainah Pagessingi, SH., MH, and Sarsir MR, SH.

The explanation from Amiruddin in the interview conducted by the author explains that legal assistance in the form of an advocate can be provided if the perpetrator wishes. However, if the perpetrator has his advocate, it is also allowed. For other assistance in the form of rehabilitation as contained in article 64 letter c, according to Yulianti, it can be provided when the public prosecutor, in this case the child prosecutor, requests rehabilitation for the victim in his indictment.

Furthermore, if the judge grants, the provision of rehabilitation assistance will be mentioned in the ruling. There is also in the decision that the author refers to, there is no provision for rehabilitation to the victims of the sexual violence in question. In response, Yulianti explained that a juvenile judge would provide rehabilitation if the prosecutor mentioned this in his indictment. In other words, a judge will only grant a request according to what is requested.

According to the information given by Amiruddin to the author, children who face the law as suspects must also be assisted since the case is transferred to the court. The assistance intended here is assistance from the Correctional Center and also advocates. The companion in this case is the Correctional Center according to article 64 whose duty is to monitor and record continuously the development of children who face the law. Furthermore, Yulianti explained that the Correctional Center is tasked with monitoring the development and behavior of children during case examinations.

The monitoring carried out by the Correctional Center aims to provide reports on children's behavior in the community before a crime occurs. In addition, Yulianti also testified that monitoring was carried out during the case involving the child being examined. The Correctional Center will visit the community where the child lives and conduct research. Yulianti added that when the Correctional Center researches children, the method can be hidden or overt in researching problems. The way this is done depends on whether the Correctional Center will conduct overt or clandestine research.

In the verdict that the author examined, the Correctional Center researched child perpetrators. In the study, the Correctional Center conducted interviews with the perpetrator's parents about the problems that befell their children. In its report, the Correctional Center stated that the main factor that caused child perpetrators to do this was because they often saw pornographic scenes.

According to Amiruddin, the research conducted by the Correctional Center is one of the supports in decision-making by judges. This is of course because with the research conducted, the judge can find out the behavior and habits of the child in society. The reading of the report from the Correctional Center is carried out during the trial, namely after the reading of the charges. In decision No. 08/Pid.Sus/2017/PN.Sgm, assistance by Correctional Center was represented by Ridha Suryadin M, S.S.

In practice, children's facilities and infrastructure are distinguished from adults. In the juvenile trial process, it is heard in a special juvenile courtroom that is closed to the public. Amiruddin added that if there is no special room for the child, he can use another room on condition that it is closed to the public.

In the trial process carried out for children, prosecutors, judges, advocates, clerks, and the Correctional Center are competent people in their fields. According to Amiruddin, his competence in his field means people who are accustomed to handling children's problems. This explanation was emphasized by Yulianti that both

prosecutors and judges must attend training as judges or child prosecutors and have certificates for these competencies.

In addition, in the conduct of juvenile trials, judges, prosecutors, advocates, and clerks are not allowed to use the attributes of the trial. Amiruddin explained that in the trial process for children, no one is allowed to use the attributes of the trial. In addition, Yulianti added that even the language used in the trial was different from the language used in ordinary trials. Based on these things, the author responds that it should be done. The treatment of children is certainly different from the treatment of adults. For this reason, the provision of special handlers for children, both facilities and infrastructure as explained is the right thing and appropriate for children.

Another important point that can be revealed as a result of the research carried out is related to article 69. This article discusses two efforts that can be made to protect children from becoming victims of sexual violence. Such efforts are a). Dissemination and dissemination of provisions of laws and regulations that protect child victims of violence; and b). monitoring, reporting, and sanctioning.

The first effort is the dissemination and socialization of the provisions of laws and regulations that protect child victims of violence, according to Yulianti, carried out by holding training or seminars on the problem of violence against children. Furthermore, Yulianti explained that this effort is often carried out by the court in cooperation with local governments.

The second effort is that monitoring and reporting can be carried out by every element of society. The role of the community in this effort is needed. The community can monitor the surrounding environment and immediately report if there is sexual violence against children. As for sanctions, those who have the right to do this are legal entities, both courts and the police.

Related to the explanation above article 69 Letter B, further affirms that Everyone is prohibited from placing, allowing, doing, ordering to commit, or participating in violence. This proves that everyone is not only forbidden to commit violence but everyone also must prevent others from committing violence.

Conclusion

Based on the results of research and discussion, it can be concluded that the child protection law in Indonesia, namely Law No. 35 of 2014, provides a clear foundation regarding the rights, obligations, and protection of children, as a revision of Law No. 23 of 2014. The application of the law in child sexual violence cases at the Sengguminasa District Court has been carried out appropriately and according to applicable regulations, by protecting child perpetrators and victims by applicable law. Any discrepancy between the provisions of the law and its implementation will be tried by the court with careful consideration.

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