

The Role of Victims in Occurrence of Sexual Crime: A Justice-Based Law Enforcement Strategy

By

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Abstract

The emergence of Law No. 11 of 2012 gave an impact on the protection of children and adolescents as offenders, as well as victims of violence. Crime is an act established by the community to violate critical values, an example of which are sexual crimes. Therefore, this study aimed at overviewing statutory policies protecting children and women from sexual crimes, along with the Law enforcement strategies for associated perpetrators in Northern Borneo. It is a normative legal review that focuses on regulatory policies, norms, and law principles concerning these crimes and the involved offenders. The results of this study indicated some underlying laws for sexual crimes against children in Indonesia, and these included Laws No. 7 of 1984, No. 5 of 1998, No. 35 of 2014, No. 7 of 2012, as well as No. 11 and No. 10 of 2012. Although several regulations on children as victims also accommodated the perpetrators, the implementation for both of those conditions was similar, meaning the position of both parties must be balanced. Thus, for adequate resolution of the prosecution process which involves handling sexual crimes by Law enforcement, the officials judged the victims merely in administrative areas, regardless of their professions.

Keywords: Sexual Crime, Law Enforcement, Justice

1. Introduction

Crime is a detrimental and disturbing act that elicits a reaction from a society or community and two aspects, namely the perpetrators and victims, are involved in the discussion. There has been a distinction between adults and children since the establishment of Law Number 12 of 2011 in the Juvenile Court. Also, the child has a uniqueness of existing either as a victim or as a perpetrator and in criminal situations (Wolak & Finkelhor, 2013). Children were regarded as victims of sexual harassment according to the data presented by the Indonesian Child Protection Commission (KPAI), where an increase of 450% within four years was observed (Erlinda, 2014). Thus, sexual harassment refers to any action, such as touching, kissing, forcing to watch particular videos or engage in sexual activity, etc. (Sulastri, 2019).

The frequency of sexual violence acts involving children is first, sexual relations, incest, rape, and sodomy, followed by exploitation through prostitution or pornography. Third, stimulation, molestation, fondling, and the fourth involves showing them genitals for sexual satisfaction purposes. The fifth occurrences include forcing children to hold other people's genitals, while the sixth is compelling them to watch sexual activity (Andari & Kajian, 2017). Thus, the KPAI with existing data proclaimed an "*emergency of sexual violence against*

children". Similar incidents happened to women, where 348,446 cases of violence identified and treated in 2017 occurred in private or personal domains, comprising of 335,062 cases through relevant insights by the Spiritual Judiciary, and 13,384 instances managed by 237 service provider organizations distributed through 34 provinces. Nonetheless, the violence classification was broken down into four categories which were physical abuse which entailed 3,982 cases, sexual assault with 2,979 incidents, interpersonal abuse with 1,404 instances, and cultural assault with 1,244 cases, and all these accounted for 41%, 31%, 15%, and 13% respectively (Adriana Venny Aryani, 2018).

Publicly, about 3,528 cases (26%) of violence were recorded and sexual violence ranked first with 2,670 incidents (76%). This was followed by 466 physical and 198 psychological cases which accounted for 13% and 6% respectively. Also, 191 cases of trafficking as a particular category constituted 5%, and 3 cases of migrant workers were documented. Apparently, these incidents were noted to occur in both the private and public sectors and as a result, undoubtedly required different methods of handling. The cases in the private areas were prosecuted by Laws on Domestic Violence, while those in the public were to be punished by provisions of sexual violence against children, and as a result, the associated rules to be used differed (Hikmah, 2017).

Furthermore, violence against female commercial sex workers was an exciting event from all the categories (Colombino et al., 2011) and the handling of these cases was unique, either in reference to the juvenile criminal justice system, the Domestic Violence Law, or the use of other legal instruments. In practice, every judge is permitted to choose any legal instrument so long it meets the indictment element and facts are discoverable in the court. Referring to the background of this study, the statutory policies protecting children and women from sexual crimes, as well as the Law enforcement strategy punishing the involved perpetrators in Northern Borneo were overviewed.

Sexual crimes against children have been studied by some researchers from a variety of perspectives. An investigation by Probosiwi and Bahransyaf clarified that nine children, all of which were elementary school students from Punggur Kecil village, West Kalimantan, were victims of anal intercourse (Probosiwi & Bahransyaf, 2015). Another study performed by Harahap revealed that the KPAI noted a 30% increase in sexual crime, particularly of anal intercourse or sodomy, and women defilement in the period of 2012 to 2013 (Safaruddin Harahap, 2016). This increase alerted individuals, especially those with authority, to handle these cases and take legal actions. Similar to the assertive training for women victimized by sexual crimes offered by Noviani *et al* (2018), this study was also expected to present significantly to the legal aspect of these crimes against women and children, as well as discover solutions for the victims and perpetrators in terms of treatment and punishment.

2. Method

This study is a substantive legal analysis that focuses on law principles and norms in numerous applicable statutory provisions and theories which are scattered in various works of literature (Mamuji, 1980). Northern Borneo was used as the regional sample from the perspective of law in terms of sexual crimes against children and women, and the data containing related cases were obtained from various online and published information. This analysis was also intended to review and examine how legal protection and enforcement agencies handled such cases (Muhdar, 2019).

Furthermore, the systems and methods used were legislative, analytical, and case-based (Marzuki, 2011), and the regulations based on criminal law policies were first analyzed. Then, an extensive overview of differences in judicial rulings was conducted, along with the juxtaposition of several related evidence to identity templates and methods to prevent sexual harassment against women and girls.

3. Law Enforcement

Law enforcement is the practice or attempt to create or implement moral standards as a real guide to traffic conduct or civil ties in the existence of a community or a state. (Jimly Assidique, n.d.). It is conducted by a specific topic which views associated actions by the subject in a restricted or narrow way. Generally, law enforcement procedures include all legal issues in a professional partnership, and anyone with a precept that either performs an act or not while dependent on the rule of Law is assumed to follow or enforce it.

The concept of Law enforcement can often be seen from the court's point of view which is the statute (Tacconi et al., 2019), and the interpretation involves both comprehensive and specific definitions. Across a broad context, policies often require principles of justice that are contained in the soundness of the established laws and standards that reside in culture. Therefore, the right and fair law enforcement are determined by the will and participation of community members, and not solely by the desires of the enforcers (Sunyoto, 2008).

Traditionally in Indonesia, the legal institutions that execute these are the police, prosecutors, judicial bodies, advocates, and other bodies which include the Directorate-General for Customs and Excise, as well as Immigration. Problems in enforcement are related to the creation of laws and regulations and a section or case also requiring focus is sexual harassment.

Sexual harassment involves practices of inappropriate acts and demands for intimacy, and specific actions that verbally or physically lead to sexual intercourse (Crosthwaite & Priest, 1996). In acute attacks, bruises, abrasions, vaginal wounds, and lacerations, as well as transections of the hymen, anal and perianal areas can occur. Physical or sexual assault effects, such as ligation wounds, along with breast, lip, and anogenital injuries can also occur (Borg et al., 2019), therefore, sexual violence is categorized as a form of abuse toward women. According to the UN Declaration on non-abuse towards women, sexual violence is any form of gender-based violence that results in or can lead to, physical, sexual, or mental hurt, or cause suffering against women. According to Article 1 of 1983, this includes risks from such acts, as well as intimidation or unreasonable deprivation of liberty, either in the society or private life. The characteristics of abuse toward women encompass all actions in the form of physical and non-physical or psychological acts and can be active or passive, also known as unchanging abuse. Other characteristics include the desire or intention of the perpetrators to harm, as well as the production of unwanted consequences or possible adverse effects on the victim which could either be physical or psychological (Swedo et al., 2019).

Rape is a benchmark for human rights violations that are quite severe against women (Hardies, 2019). The actions of perpetrators, especially against women, are evidence of arbitrariness and cruelty that is contrary to human nature which is naturally meant to respect and protect the rights of others. Consequently, the regulation of crime in Indonesia is performed in a codified manner through the Criminal Code and it mentions two types of rape criminal

offenses. These are stated in Article 285 which regulates rape crimes for intercourse and Article 289 for rape offenses that involve committing obscene acts.

The laws related to the act of rape also allow for judicial penalties against the offended victims. Section 285 of the Criminal Code states that the ultimate statutory sentence obtained by the victims is twelve years in jail. Maximum sentences are non-existent, thereby enabling the perpetrators to be punished at a degree that is less than the repercussions of their conduct against the victims of sexual violence or rape. (Kristiani, 2014). Each sex crime has a link between the attacker, the survivor, the circumstance, and the environmental factors, all of which perform respective roles as catalysts for a sex crime.

3.1. Regulatory Policies for Children and Women Protection against Sexual Crimes

Although several laws in the philosophy of legislation discuss women and girls, this study importantly and carefully focused on those that concerned the lives of adolescents. These include Laws No. 7 of 1984, No. 5 of 1998, No. 35 of 2014, as well as Laws No. 7, No.11, and No. 10 of 2012. *First*, Law No. 7/1894 registered under the auspices of the UN and relevant agencies promotes fair treatment for males and females. However, considering the agreements, statements, and guidelines implemented by these bodies where fair treatment for males and females are expressly supported, as well as various documents existing to this effect, it is highly disconcerting that extensive discrimination against women still prevails.

Second, No 35/2014 on child safety governs sexual abuse in the case of assault. Sexual exploitation, such as all kinds of manipulation of the reproductive organs or other body parts of the child for income, including but not limited to trafficking and sexual violence are clarified in Article 66 (Faller et al., 2006). In addition to sex trafficking, this article defines economic abuse which is an act with or without the permission of the child survivor, including but not limited to slavery or related forms, forced labor or facilities, coercion, robbery, as well as physical, mental, or reproductive usage, or illegal transfer or transplantation of organs and body tissues (Tsopelas et al., 2012).

Although the type of sexual violence in the form of exploitation is stated in the Child Protection Act, this provision only protects victims that are children. It uses the words "intercourse" and "obscene acts" to indicate sexual violence and even though the law mentioned the phrase "sexual crime", the term was undefined. In a study, Kurniawati defined sexual violence as a set of relationships and interactions between children and an older or mature person where they are exploited as their sexual satisfier (Kurniawati, 2014).

Third, handling social conflicts refers to a collection of interventions performed regularly and prepared for circumstances and incidents before, after, and during a confrontation. This includes conflict resolution and termination, as well as post-conflict rehabilitation. In this law, the values of justice, civil dignity, race, and families expressed in the treatment of conflicts refer to a single diversity, gender equality, order, and legal certainty. It also reflects sustainability, local wisdom, state responsibility, participation, impartiality, and non-discrimination.

According to Article 3 of this Law, the purpose of handling social conflict is to create a safe, peaceful, and prosperous community life, as well as maintain a peaceful and harmonious condition in social relations. It is also to increase tolerance, uphold governmental functions, and protect lives, property, public facilities, and infrastructure. Other purposes include to provide protection and fulfillment of victims' rights, restore the physical and mental condition of the community, as well as public facilities. Regarding the context of sexual crime against

children, mental and physical conditions have become important matters. Some mental impacts on children, such as a fear of meeting people, aphasia, physical symptoms, lack of confidence, getting angered easily, and Stockholm syndrome.

Fourth, a justice system was formed in 1997 concerning Juvenile Court, while the enactment of the law commenced from January 3, 1998, with the procedures for the trial and sentence based on the Law. Indeed, long before the rule of the Juvenile Court was formed, the district court had tried various criminal cases involving children by applying the provisions of the Legal Law and Manual of Criminal Procedure. Although the functions of juvenile justice are not different from other courts which include accepting, examining, adjudicating, and completing cases submitted to it, this system handles cases concerning children only.

The implementation of the juvenile justice system shows that the State of Indonesia is aware of the position of the child as the next generation of the nation. Therefore, they are entitled to special protection, especially legally, in the justice system to protect their dignity (Justice, 2001). Indonesia, as a State party where this convention called for the concept of equal rights for minors, also included additional safeguards for minors in dispute with the rule. Meanwhile, in the Child Judicial System, some efforts were made to incorporate the Criminal Justice System as a framework for policy growth. These were performed to secure and preserve children's protection against the state, thus underlining the concept of restorative justice. Studies on the field show that the problems faced by children in conflict with the Law occur in three stages, which are *pre-adjudication*, *adjudication*, and *post-adjudication*. The readiness of all components involved in the criminal law system is needed and it has, therefore, become necessary to increase the coordination between ministries and institutions, as well as enhance the ability of Law enforcement officers and stakeholders. Also, drafting regulations for implementation, provision of facilities and infrastructure, along with monitoring and evaluation, should be executed.

Fifth, the national legislation on child protection regulates some criminal acts including violence, neglect, exploitation, mistreatment, and discrimination, and has proven that these acts are prohibited and threatened with punishment. The regulation of the aforementioned criminal offences is contained in several articles in laws No. 23 of 2002 and No. 35 of 2014, as well as No. 17 of 2016 which is specifically for sexual crimes against children. However, the Law does not provide a satisfactory definition of the crime of violence, exploitation, neglect, discrimination and mistreatment of children. Instead, it tends to provide a threat of punishment to perpetrators and uses a retributive approach. Although several studies provide threats of penalties in the form of fines, compensation, and rehabilitation, the retributive approach is more prominent in national law.

Generally, the national law does not provide a satisfactory definition of crimes of violence, exploitation, neglect, discrimination, and mistreatment of children. Even non-criminal types are undefined, thus, it is challenging to measure criminal acts aimed at children due to the weakness of the formulated elements of the offence. The value of incorporating in children the characteristics of a crime is for the benefit of court testimonies. Within the sense of justice, it is essential to ensure that the victims lawfully and convincingly prove the criminal to be capable of performing an offence against a child. The following shows some definitions of the crime in the context of national law, particularly from the perspective of laws No. 23/2002, No. 35/2014, No. 23/2004, and No. 44/2008.

3.2. *Legal Punishment and Sanction for Sexual Crime*

Law No. 35 of 2014 only regulates criminal threats against a person that forces a child to have intercourse, along with their exploitation (Morgan & Long, 2018). Thus, this law cannot be used to ensnare perpetrators guilty of committing sexual violence outside the acts of intercourse or exploitation (Finn & Czech, 2015). Also, it does not regulate prevention to help children avoid sexual violence. Although formulating norms of parental obligations prevent marriages at childhood, this provision is not accompanied by punishments should parents fail to prohibit such partnerships by children (Finn & Czech, 2015).

However, the Amendments to Law No. 23/2002 through No. 35/2014 have stated special protection aimed at children that have been exploited sexually or economically, which include rehabilitation and recovery efforts. It also involves stipulating that victims are entitled to apply for the right of restitution by the court, which is the responsibility of the perpetrators of crime. Furthermore, this law outlines efforts that have been made to fulfil the enforcement of additional safeguards for juvenile victims of sexual offences. This provision is also accompanied by a note stating that no further explanation exists on how the child's right to recovery ensured that the victim technically and continuously enjoyed the violation (Tamarit Sumalla & Hernández-Hidalgo, 2018).

As part of the ratification procedure, the Government enacted law No. 23/2002 on Child Safety which deals with a range of particular concerns. These include the issues of children in dispute with the constitution, as well as those from ethnic communities, and victims of economic and sexual abuse. It also includes trafficked infants and those that are perpetrators of violence, as well as children that are guilty of disturbances. The implementation of this law is in line with the mandate of the Constitution of the Republic of Indonesia on the protection of civil rights, specifically that children as humans have the same right to grow and develop.

Furthermore, some regulatory frameworks have not been able to perform efficiently over time as inconsistencies within the sectorial legislation about the classification of children still exist. Conversely, the rise in violence against children in the society, especially sexual abuse, demands greater involvement from the State, provincial governments, the public, as well as from all actors engaged in the implementation of protecting them. The protection against victimized children should be reconsidered to be granted with special treatment to ensure their physical and mental growth as the next generation of the future. In the case of providing justice, the judges are to take various actions by examining in advance the truth of the events proposed to them (Patel & Atkins, 2021).

3.3. *Law Enforcement Strategy for Perpetrators of Sexual Crimes against*

Oftentimes, discussions on law enforcement are about a system that applies to concerned officers, as well as the criminal justice system problem, because both are interdependent, start with an investigation and end in court decisions (Aday et al., 2006). Generally, these are confronted with principles contained in the law, especially criminal law, such as analogies which are indeed theoretically unjustified. However, other methods of resolving criminal problems, such as using the principle of equality, exist and so many cases use these analogies, an example being domestic violence. The initial purpose of establishing the Domestic Violence Act was to minimize the occurrence and was with the assumption that victims tend to be wives and children. However, facts state differently as fathers or husbands also tend to be victims and endpoints to solve these problems may be difficult to locate in analogies.

An interesting case in this study was the discovery of a female prostitute victim that was categorized as a child because she was below 17 years. The details of this crime explained by the defendant, Muhammad Nur Pae Bin Pae, occurred on a day and date that cannot be remembered with certainty. It was supposedly in June 2017 between 11:00 p.m. and 05.00 a.m. or some other time in that month and took place in the room of the abuser in the Tanjung Selor Syahbandar Office on Jend Sudirman Street, Tanjung Selor Hilir, a sub-district of Tanjung Selor, Bulungan District. A crime is said to be deliberately perpetrated when someone coerces a child to have a relationship with such a person or with another adult. The actions linked in such a manner were deemed to be an act that had been continuously performed by the convict. Therefore, this was the procedure used and the case was assumed to satisfy the elements of the criminal act.

From the perspective of law, Article 81(2) of Law No. 17/2016 on the adoption of Union Laws on the safety of children was used in place of No. 1/2016 which was the second amendment of No. 23 of 2002 on the security of children. Paragraph 2 of the penal Laws was referred to in paragraph 1 and was stated to also extend to someone who deliberately performs a fraud, tells a sequence of lies or incites a child to establish a relationship with them or with another adult. Additionally, subsection 1 notes that any individual in violation of the provisions of Article 76D will be sentenced to a minimum of five years' imprisonment and a maximum of 15 years' imprisonment and/or a fine of 5 billion Rupiahs. Also, Article 76D was supposed to be the focus of Law 35/2014 which states that individuals are prohibited from committing or threatening violence by compelling children to have intercourse with them or others.

Furthermore, the most important factor to consider was the victim protection, while having to pay attention to the perpetrator (Tamarit Sumalla & Hernández-Hidalgo, 2018). Basically, the act elements were to be regarded, and fairness was necessary between all the types of actions, including that of the perpetrator, as well as the victim and the criminal sanctions that would be applied. Administratively, the victim was perceived as a student according to the information in the Population Identity Card and also viewed as a commercial sex worker. Therefore, more attention concerning the suitability of actions and consequences was required and a fundamental detail that needed to be known was the causality which resulted in the victim being harmed according to the law. Basically, the causality teaching is regulated in the Criminal Code, but the nature is not explicitly referred to (Kartanegara, n.d.), rather the judge simply determines the existence of such a relationship or the factual cause. This is possible with the knowledge of philosophical teachings and criminal laws which state that any incident without which a criminal event would not occur can be seen as a cause. Regarding qualified offenses, however, lawmakers have considered the necessity for restrictions on the determination of events that deserve to be called causes (Miller, 2013). This is because Lawmakers cannot hold the offender responsible for all matters, including the most unlikely, related to the offense (Savage & Windsor, 2018).

Theoretically, there are two functions of criminal offense formulations which are the concrete application of legality principles where sanctions can only be given for acts which were first formed in the legislation. The second is that the formulated criminal offense is a function of evidence in the procedural law (Prescott, 2016). Therefore, this case should be classified as a criminal act that is qualified by the consequences, and the ruling was not to be based on the fault of the defendant but the emergence of aggravating effects that objectively determined his actions. This is in line with the theory put forward by van Hamel which says that it is wrong to make criminal charges without seeing mistakes, even though what is important in modern law is the defendant's inner attitude. It also states that even when the

existence of an offense type is maintained, it is sufficient so far the criminal threat was omitted. Therefore, the judge can impose a more severe offense should any consequence arise. Also, when consequences are desired *in concreto*, a criminal act must be proven (Saleh, 1994).

4. Conclusion

The Government has made several laws and regulations in addressing issues relating to the protection of children and women from sexual crimes. Nevertheless, enforcers must be observant while using articles and laws to ensnare perpetrators of sexual crimes, especially when applying causality. This is because tracing the effect to the cause is highly important as it is the primary basis of determining mistakes and accountability. Also, law enforcement while dealing with sexual crimes in Northern Borneo Province in this case relied solely on administration. By so doing, the main principles of the enforcement which were to explore the values existing in perpetrators and victims were not appropriately implemented. Administratively, the victim was a student and a child, and so the victim's profession was not considered and the causality built was, therefore, not based on empirical facts. Moreover, the suggestions that were given include the policies made by the Government for sexual crimes, because even though they are accommodated in existing laws, they do not encompass prostitution. Should there be an absence of clear rules about prostitution, the law would be returned to the existing principle, and the enforcer must explore the values that exist in that society.

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