

## **Law Enforcement on Child Sexual Abuse in Manado City**

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### **ABSTRACT**

This study investigates child sexual abuse cases that remain high in Manado as well as its law enforcement against the perpetrators, especially for underage perpetrators. By using a normative legal method, this research paper aims to examine legal materials, namely the Criminal Code and the Child Protection Law No. 35 of 2014 by collecting empirical data about law enforcement by the North Sulawesi Regional Police. The findings indicate that the law enforcement on underage perpetrators depends on the investigators in charge, in principle, under Law no. 35 of 2014, and they are detained in Child Care Centers of Tomohon. Also, this research specifically underlined that law enforcement against underage perpetrators has followed the procedures of the juvenile justice system, while the victims do need special attention of institutions outside the police. To ensure the rights to education in detention, this study suggests to make special rules regarding the obligation of teachers to provide private lessons.

**Keywords:** Child Sexual Abuse, Law Enforcement

### **INTRODUCTION**

Globalization has resulted in information disclosure and freedom of access to pornographic sites. This triggers various cases of sexual abuse and rape increasingly reported in the mass media every day. Children, especially girls, are vulnerable to this crime, such as rape, groping, kissing, and exhibitionism. The perpetrators are parent friends, father or step-father, uncle or neighbors.

Sexual abuse and rape are threats for Indonesian children as they are the nation's successive generation. Thus, at the executive level, a stop campaign of child abuse, thematic discussions with students about the protection of women and children, and coordination meetings with NGOs in handling victims of violence against women and children have been conducted (Tasik, 2019). The crime is generally committed by the opposite sex, especially by men against girls. The prohibition of this criminal act has been regulated in Article 289 of Criminal Code (KUHP), which states that whoever with violence or threats of violence forces a person to commit or allow obscene acts, is threatened with committing an act that stimulates the honor of decency with imprisonment a maximum of nine-year (Mulyatno, 2012). Preliminary data show increasing daily cases of children sexual abuse in Manado. SWARA Perempuan, an institution that focuses on protecting women, recorded 100 cases in 2019.

This kind of crime is categorized as a decency crime related to sex. Adji (1976) stated that immoral crimes which are only limited to sexual crimes and those that are related to sex are a definition that already has sociological value in society.

In fact, North Sulawesi, mass media reported cases of child sexual abuse and rape to occur every day. The punishments given are not commensurate with the suffering of the victim, either physical, psychological, and the victim's future. Imprisonment can be given to anyone who facilitates the committing of obscene acts with a person mentioned above who is known to be underage or who should reasonably be suspected of doing so, with other people. The foregoing can also be imposed on a person who deliberately connects or facilitates the obscene act of another person by making it a search or habit, to put on trial and charged by criminal law.

This paper formulates the research problem by (1) How the investigation of underage sexual abuse perpetrators against children is, and (2) How to recover the perpetrators and victims in the investigation.

## **RESEARCH METHOD**

This study used a normative juridical approach, the approach of legal norms that regulates the crime of child sexual abuse and the responsibilities. The legal materials are the Criminal Code, Law of Child Protection Number 23 of 1992, and Law Number 35 of 2014. In collecting primary legal data or material as well as in secondary law, we studied and examined the laws and regulations, books or literature, jurisprudence, related legal journals and magazines, and mass media.

The research data were collected from the North Sulawesi Police and the North Sulawesi SWARA Permepuan Institute and the City of Manado. Then, the comprehensive normative analysis of the primary and secondary legal materials, and research data is carried out and the results are presented narratively.

## **RESULTS AND DISCUSSION**

### **Legal Proceedings against Underage Perpetrators of Child Sexual Abuse**

The observation showed that the process of handling underage perpetrators by the North Sulawesi Police had followed the juvenile justice system which adopted a diversion system. However, there were still shortcomings in which the recovery shelter for the victims and perpetrators had not been maximally implemented. Recovery is of importance because sexual abuse could bring vast consequences that can be classified into several categories. Some become negative and aggressive and easily frustrated; some become very passive and apathetic. Some of them lose their personality as they extraordinarily strive to fulfill the wishes of their parents (parental extension), are unable to respect themselves (chronically low self-esteem). Some find it difficult to build relationships with others. However, the worst is the emergence of a tremendous sense of self-hatred as they feel remorse, leading them to self-torturing and suicide.

The law enforcement system against underage perpetrators of child sexual abuse has not attempted to carry out restorations of the relationship between the perpetrators and the victims leaving the victims a prolonged trauma if the perpetrators were released from custody. Apart from these psychological consequences, they could also have abnormal development of the body, and nerve system damage. No monitoring was carried out

either by investigators or institutions related to the child protection. It was revealed that children often have trouble sleeping and wake up in the middle of the night screaming in fear. They also suffer from psychosomatics, such as asthma. Some children are so sad that they often vomit after eating and lose weight dramatically. As they get older, boys tend to become extremely aggressive and hostile; while girls often regress and withdraw into their own fantasy world.

The worst psychological impact of the trauma is that girls believe boys are exasperating, while boys believe that men have the right to beat their wives. Children are always sensitive while parents are not realizing what happens between them affects their children. It is often said that children are a reflection of what is happening in a household. If a family atmosphere is healthy and amusing, the children's faces will be so cheerful and radiant. Conversely, if they are gloomy and sad, usually something has happened to their parents. As a place for a good education, where children learn for the first time about values and how to behave, parent's behavior affects their children's in the future. If the violence is so dominant, the children copy it and even carry it into their adulthood. As violence happened so often in their family, they consider it "normal".

Article 13 explains that it is the right of every child to receive protection from discrimination, exploitation (economic and sexual), neglect, cruelty, violence, and abuse. Child protection is basically to ensure their rights in the household. Article 20 states that the state, government, society, family, and parents are obliged and responsible for the implementation of child protection.

Child protection is a universal obligation, implying that everyone must seek child protection according to their abilities with various kinds of efforts in certain situations and conditions. Protection creates conditions in which children can exercise their rights and obligations. It is a form of justice in society. The form of child protection by the state and the government is providing support for facilities and infrastructure (Abdussalam, 2007). Even though children as perpetrators of child sexual abuse, their rights to education are not reduced during the detention.

Children are born free. The freedom must not be eliminated yet to be protected and expanded for the right to life and protection from parents, family, community, nation, and state. Law Number 35 of 2014 concerning child protection has been enacted to protect children from various types of violence, including sexual abuse and rape, destroying their future. This ensures every child grows and develops with full human rights (Abdussalam, 2007).

Children's rights must be protected since children are the object of complete human development and the positive law supports the social institutions needed for such complete development. Human development through a continuous evolutionary process occurs from human self-awareness. The process itself is the actualization of the human potential of individuals and communities.

To protect children, the government continues to maximize its function as the enforcer to take firm action against all forms of child sexual abuse. Law enforcers are used effectively every time human rights violations occur, as their rights are deprived and being used for personal benefits. Thus, institutional support of laws and regulations is needed to guarantee its implementation. Several laws only regulate certain matters concerning children rather than specifically regulating all aspects of child protection.

Children are those under eighteen years old, including the unborn children in the womb (Abdussalam, 2007). Child protection is all activities to guarantee and protect children and their rights to live, grow, develop and participate optimally in accordance with human dignity and protection from violence and discrimination.

Special protection is provided to children in emergencies, in conflict with the law, from isolated minority groups, economically and/or sexually exploited, trafficked, and victims of narcotics, psychotropic substances, and other addictive substances. Underage (*minderjarigheid*) refers to children under the supervision of a guardian (*minderjarige ondervoordij*) (Mulyadi, 1998). By the aforementioned aspects, it turns out that Indonesia's positive law (*ius constitutum / ius operatum*) does not regulate the existence of a standardized and universally applicable legal unification to determine the criteria for age limits for a child.

The rate of child sexual abuse and violence in Indonesia has grown rapidly, both quantitatively and qualitatively. Physical violence such as assault, murder, robbery, hooliganism, sexual savagery such as sodomy, and rape. Non-physical violence (white-collar crime) continues. With the increasing public awareness, human rights issues have become national issues.

In the future, our children have a great responsibility, for this nation, and religion. Children are the fathers of the future, the successors of dreams, and the heir of descent. Children are the sprouts of the nation. The younger generation, the successors of the nation's struggle idealism, have a strategic role and special characteristics that ensure the existence of the nation and state in the future (Wahid & Irfan, 2011).

Child sexual abuse occurs since the child is not protected by the parents, who are supposed to be a place for parental protection and affection. There are many ways parents apply in educating their children. Some prioritize affection, good communication, and a more effective approach. Some use violence as a method of compliance and discipline, both physical and psychological, chosen to change children's behavior and shape expected behaviors.

Abuse and violence that occur to children do not only occur in the family environment. News in the media lately also shows that violence against children occurs anywhere. In Pontianak, three children living in an orphanage being raped by their friends is one of the many cases of child abuse revealed, while the unrevealed are estimated to be even more.

Child sexual abuse and violence occur unnoticeably. In addition to teachers' violence against their students and brawls among students, gangs have sprung up in schools. Violence committed in schools is one proof of violence in the educational environment. Violence in schools is a vicious cycle, where seniors usually take their anger out on juniors, as they were treated before, and this will continue if this is not dealt with immediately. This is where educators and policymakers in schools play a highly important role to break the chain. If violence in schools is not handled, a culture of bullying can be cultured, creating violent gangs in schools. Brawls between students were allegedly the failure of the educational program and curriculum as schools only succeeded in cultivating academic theory yet failed to apply values/morals. As a result, children are directed to a gaping ravine and cross a fragile path.



This will affect their personality in the future. Their childhood experiences are the most valuable in life, used as a reference in overcoming life's problems when they grow up. Children will always feel guilty and have the wrong self-concept. Parents/caregivers are the sources of children's development security, where they learn and recognize themselves as social beings. Everything they make affects their family, and vice versa. The family provides the basis for the formation of their behavior, character, morals, and education. The experience of family interaction will also determine the pattern of children's behavior towards other people in society. In addition to the starting place for children's socialization process, a family is also the place of their hope and emotional satisfaction they have since they are newborn babies.

The impact of investigations on the child personality development is not included in the investigation scheme for the perpetrators, making them tend to repeat their actions. The underage perpetrators will repeat the actions if the environment they live in does not support the physical recovery of the children either for the perpetrators or the victims. This relates to the internal security factor (parents/caregivers) or the external security factor (social environment). Internal security builds healthy relationships with the surrounding people; external security deals with the larger environment, in which without any guarantee of safety, the children will always feel anxious and become quiet.

The results of this study reveal that family greatly determines the children's behavior. It is the family that will give birth to generations, whose potential depends on the stimuli received from the environment. The wrong treatment of children will get the same response from children. Most parents who abuse children are because they were treated the same by their parents. This treatment will remain in the subconscious and becomes their parenting pattern. Without a proper understanding of healthy parenting, this will continue in the future.

The importance of main attention for the victims is that the victims occupy a significant role in the occurrence of a crime. Obtaining a broad and in-depth understanding of crime victims is expected to make it easier to find efforts to tackle crime which will ultimately lead to a decrease in the quantity and quality of crime. In the first stage, victimology only studies crime victims, said to be "penal or special victimology". In the second phase, victimology does not examine the problem of crime victims but also covers accident victims. This phase is known as "general victimology. The third phase, victimology has developed more broadly, namely examining the problems of victims due to abuse of power and human rights. This is said to be new victimology.

The effect of child sexual abuse with violence, according to Moore in Nugroho (1992), is major. It is revealed that the effects of these acts of violence are broad and in general and can be classified into several categories.

Child sexual abuse and violence are devastating. Physical spanking can cause emotional damage to children. In this regard, Hofeller and La Rossa in Nugroho (1992), explain the psychological effects of violence on children. It was revealed that children often have trouble sleeping and wake up in the middle of the night screaming in fear. They also suffer from psychosomatics, such as asthma. Some children are so sad that they often vomit after eating and lose weight dramatically. As they get older, boys tend to become extremely aggressive and hostile; while girls often regress and withdraw into their own fantasy world (Gosita, 1987).

### **Protection of Underage Perpetrators**

This research found that underage perpetrator's rights are often neglected such as to get private tutors in child prisons. The tutors are beneficial since even though the children are undergoing a legal process, they must not lose their future. The unfulfilled rights become an important issue of underage perpetrator protection. Every child abuse perpetrator will be held accountable for his/her actions through lawsuits in accordance with Article 76 E of Law No. 35 of 2014 and Article 82 of LEGAL RULES No. 1 of 2016. The criminal charges related to victim loss do not necessarily come from losses of being a victim of a crime.

The lawsuits depend on the type of offense. They are complaint offense, and common offense. Complaint offense can only be processed if there is a complaint or report from a person who is a victim of a crime. The prosecution of the offense depends on the consent of the injured person (the victim). In this offense, the victim can withdraw the report to the authorities if there has been a reconciliation. It should be noted that the person who submitted the complaint has the right to withdraw within three months after the complaint is filed.

The change in the system for handling child sexual abuse in Law number 35 of 2014 from the complaint offense for common offense implies that sexual abuse will face strict legal prosecution. Underage victims are still included in the category of victims as they suffer material and mental losses. Concerning crime victims, it is necessary to establish an institution that specifically handles it. However, first of all, it is necessary to convey adequate information regarding the rights of the victims and their families, if in the future they experience losses or suffers as a result of the crime that befell them.

Child protection policies and programs have global, national, and local dimensions. They act as institutional tools in protecting children from violence. Policies are a grand design to respond to certain issues or problems in a systematic, institutional, and sustainable manner. Policies serve as guidelines to be implemented by action programs. Action programs are a variety of actions with more applicable, timed, and clear geographic areas. Indonesia already has legal instruments to protect children. However, it cannot only be viewed as a matter of politics and legislation (a state obligation). The protection of children's welfare is also part of the responsibility of parents and community care.

With the absence of community participation, the formal legal approach alone is not effective to protect children. Many parents harshly give physical punishment to give lessons to their children. In fact, the truth is that children were being taught violence lessons by their parents. Naturally, children are excellent imitators. They will behave similarly if they face similar situations. This phenomenon eventually becomes an unbroken chain, where each generation will treat the same thing in response to the pressing situational conditions until this inherited behavior pattern becomes a "culture of violence". If the current parenting style preserves this culture of violence, in the next 20-30 years our society will be worse than what we are witnessing today.

Sexual abuse might coincide with psychological aggression. This makes it more difficult for children to adapt or even behave badly, due to various factors. The children may lack self-confidence, or conversely, become a rebel. What is most worrying is that if they do the same to their children one day, the chain of violence will continue. The perpetrators of sexual harassment and sexual abuse, if done continuously, will cause the children to

suffer psychological disorders. All acts of violence against children will be recorded in their subconscious and will be carried over to adulthood, and continue throughout their life. Children do not belong to their parents completely, they are only entrusted by the Creator. It is necessary to respect children with limitations as whole individuals, not as small adults.

### **CONCLUSIONS**

This research specifically found that law enforcement against underage perpetrators of child sexual abuse has followed the procedures of the juvenile justice system, while the underage victims do need special attention because their handling requires institutions outside the police, such as doctors, and social services. Meanwhile, the underage perpetrators will be detained in juvenile jail without cutting their rights to education. Ensuring the protection of the rights of the perpetrators and the victims requires investigations. This requires special police on duty. This must be supported by Indonesian National Police regulations. To ensure their rights to education, it is necessary to make specific rules regarding the obligation of teachers to provide private lessons such as a homeschooling model for the children.

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