

LAW ENFORCEMENT TO CHILDREN AS THE VICTIMS OF SEXUAL VIOLENCE IN MEDAN

YUSRIANA¹, SRI ISTIAWATI², NUFARIS ELISA³ and DELIANI⁴

^{1, 2, 3, 4} Faculty of Law, Amir Hamzah University, Indonesia. ¹Email: ayusriana42@gmail.com

Abstract

This research focuses on Indonesia's Draft Law on the Elimination of Sexual Violence and the principles of legal protection for children who have been sexually abused in Medan. As part of the typology of doctrinal research, normative law was used in this study. A conceptual approach and legislation were used in the research. In this study, it was found that the principles of child protection were applied because children cannot fight alone, because so many people have an impact on their lives, children cannot defend their own rights, therefore the state and society have an interest in protecting children with their rights. The law that protects children from violence is outlined in Law no. 23 of 2004 concerning KDRT, the Criminal Code concerning 'rape' in Article 285 of the Criminal Code which is an act of sexual violence, Law no. 31 of 2014 which amended Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, especially in Article 5, Article 8, and Article 9 and more specifically in Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection in Article 9, Article 15, Article 59 paragraph (2) letter J and Article 76D, and the people who carry out criminal demonstrations of sexual maltreatment against kids will get sanctions as specified in Article 81. With the existing legal principles, it is expected that cases of violence Sexual intercourse in the city of Medan can decrease in number, especially in children. In addition, the sensitivity of people around such as parents and other siblings is of course very important to educate children to be able and understand what is happening to the child so that each child is able to speak up about what he has experienced.

Keywords: Law Enforcement; Child; Sexual Violence

1. INTRODUCTION

Sexual violence is a lawbreaker act, sexual savagery can be deciphered as the event of an undesirable sexual methodology by an individual against someone else. Sexual contact can be verbal or physical, depending on the situation. As a result, sexual harassment can take many different forms, such as intentionally touching another person's body, raping them, making sexual gestures with one's hands, or making sexual jokes or ridicule or sexually suggestive voices, facial expressions, and a lot more.

Sexual violence is currently a frequently reported topic in the media. Because a variety of groups suffer from sexual violence in Indonesia itself starting with young children through adults. In point of fact, not only affects women but also men. This sexual violence can take place in a variety of groups, but it can also happen anywhere, like at work, in public places, at schools, and even in families (Anggoman, 2019).

Violations of human rights, crimes against human dignity, and a form of discrimination that must be eradicated are all examples of various forms of violence. Survivors of sexual viciousness are generally ladies who are obliged to get insurance from both the state and society so casualties can live openly and keep away from the shadow of brutality, torment and treatment that prompts debasing human respect and status (torment, other savage, barbaric and corrupting

treatment). Taken from the North Sumatra Women and Children Empowerment Service's official website. In terms of cases of sexual violence, North Sumatra is said to be Indonesia's third-largest province. According to the data, there were 216 cases of sexual violence in 2019, 1,013 cases in 2020, and 953 cases in 2021 through December. It is Indonesia's third-largest. The number of cases between 2019 and 2020 appears to be quite significant based on these data. In fact, it has grown five times as much. In contrast, the number of cases typically remains constant from 2020 to 2021. He also got the information that the number of cases that were recorded was only 10% of the total number of cases that happened. As a matter of fact, there are numerous different instances of sexual violence, yet the person in question or the casualty's family don't say anything negative since it is viewed as a shame.

For the period of June to July of 2022, the Women and Children Protection Unit (PPA) Sat Reskrim Polrestabes Medan released disclosures of cases of sexual harassment or violence. However, out of a total of 55 police reports (LP) that were submitted, only 21 cases could be revealed and the perpetrators were arrested. The obtained data indicate that the Medan Police receive significantly more reports of child sexual and physical abuse and violence. This is a big question among the people. Originally, the disclosure was less than half of the total incoming reports. Recently, a case that has become quite a spotlight in the city of Medan is a case of sexual violence that occurred in a 12-year-old child with the initials JA. The reason is that the child has been a victim of sexual assault by his own family since the age of 5 years. Until this case was revealed JA became a victim of sexual assault who contracted the HIV-infected disease. Based on this hall, it can be seen that victims of sexual assault have difficulty expressing what has happened. Of course this is caused by trauma physically or psychologically.

In this instance, the government is the first to take care of the interests of sexual violence victims, either through the judicial system or through specific social care facilities. This is an essential part of criminal law policies and social policies, as well as existing social institutions and institutions with state power that must be taken into account (Surayda, 2017). Several issues arise as a result of these factors, including the following: first, how are criminal acts of sexual violence combated by law enforcement, and second, how are victims of sexual violence protected by law?

As described above, this study will focus on the principles of law enforcement for children as victims of sexual violence in Medan and Indonesia's Draft Law on the Elimination of Sexual Violence.

2. REVIEW OF LITERATURE

2.1 Legal protection

As part of community protection, legal protection of crime victims can take many forms, including the provision of restitution, compensation, medical services, and legal assistance. Legal protection is all efforts to fulfil rights and provide assistance to provide a sense of security to witnesses and/or victims.

In the national criminal law system, criminals' legal protection is heavily regulated. The following are a few examples of measures that can be taken to guard against criminals:

- 1) The right to know the basis/reason for the arrest, detention and or imposition of a crime against him.
- 2) The right to be compensated or rehabilitated in the event that his arrest, detention, or criminal conviction is unlawful.
- 3) The right to express opinions both orally and in writing.
- 4) The right not to make a statement (the right to be silent).
- 5) The right to be treated equally (without discrimination).

2.2 Definition of Victim

Those who suffer harm as a result of a crime or violation of the law, whether committed by an individual, society, or the state, are referred to as victims. The term "victim" refers to a person who has been harmed physically or mentally, has lost property, or has died as a result of the acts or efforts of minor criminals. Here it is clear that what is meant by people who experience physical suffering and so on are victims of violations or criminal acts.

The following are some of the applicable legal regulations that define a victim:

- a) In accordance with Article 1 paragraph 3 of Law 31 of 2014, the Protection of Witnesses and Victims Amendments to Law 13 of 2006. Paragraph 3 of Article I reads, "A person who has lost their physical, mental, or financial resources as a result of a crime is a victim.
- b) Article 1 paragraph 3 of Law No. 23 of 2004 Concerning the Elimination of Domestic Violence Paragraph 3 of Article I reads, "Within the scope of the household, "victims" are individuals who experience violence or threats of violence.
- c) The Truth and Reconciliation Commission is addressed in paragraph (5) of Article 1 of Law No. 27 of 2004. The phrase "victim" is defined in paragraph (5) of Article I: A victim is an individual or group of people who are subjected to physical, mental, or emotional suffering, economic loss, or neglect, reduction, or deprivation of their fundamental rights as a direct result of gross violations of human rights. Victims are also the heirs of those who commit the violations.

2.3 Sexual Harassment

Any sexual deviation in terms of direction, interest, or sexual orientation is sexual harassment. A disorder or disorders include deviance. In contrast, sexual behaviour is any behaviour that is motivated by sexual desire, whether with another person of the same sex or another of the opposite sex. The types of this conduct can shift, going from sensations of fascination with conduct dating, making out and engaging in sexual relations. Sexual objects can also be other people, the person themselves, or imagined objects. Sexual deviance is a form of deviant behaviour because it goes against the rules. Sexual deviance can be understood as an act that

disregards norms and values that go against, contradict, or deviate from legal guidelines. The term "sexual harassment" refers to any and all behaviours that, when carried out unintentionally and against the person being targeted, elicit negative emotions such as shame, resentment, rage, hatred, and so on in those who are the targets. Sexual harassment can take many forms, including the following: Pinching, poking, patting, or touching of particular body parts, certain or sexual gestures, invitations to date with the lure or threats, and invitations to have sexual relations or rape are all examples of flirting. Other examples include comments with sex or gender connotations, pornographic humor, and naughty whistles.

Sexual assault can occur at anytime and anywhere. Despite the fact, that women are typically the victims of sexual harassment, this does not mean that men are immune to it or have never been subjected to it. As Widjojo's opinion emphasizes more about forcing sexual intercourse (having intercourse) on a woman who is not his wife. Coercion by men makes or causes women to be forced to serve sexual intercourse

3. RESEARCH METHODS

The method that was used in this study is normative law, which is a type of doctrinal research. A conceptual approach and legislation were used in the research. Secondary data or data obtained indirectly through library research are the sources of the data used. Tampubolon (2016) says that primary law is data that has legal force, like legislation, and that secondary and tertiary legal materials are supporting data for primary legal materials, like previously published studies and books on the subject. The obtained legal materials are then subjected to descriptive-qualitative analysis to arrive at conclusions that are scientifically supported.

4. DISCUSSION

4.1 Facts of the Occurrence of Sexual Harassment Cases in Medan

Sexual harassment is too complex, troubling, and troubling for the community to be viewed solely from a micro level. You must be willing to enter various aspects of life that have an impact on human behaviour, such as decency crimes and harassment, if you want to determine the source of the issue. The natural environment, sociological, political, economic, and cultural factors (religion included) all play a role in shaping human behaviour, which does not emerge on its own but rather evolves over time.

In general, the victims of sexual crimes are women. Sexual harassment of women is not a new case in society, most of the perpetrators of sexual crimes are adults, although not a few of the perpetrators are children from adolescence to adulthood. In addition to psychological conditions, there are other factors that encourage sexual harassment crimes, namely the influence of an unfavorable environment, pornographic readings, pornographic images, pornographic films and VCDs that are widely circulated in the community. The circulation of reading books, pictures, films and pornographic VCDs can cause stimulation and influence for those who read and see it, as a result there are many sexual deviations, especially by teenagers. In most cases, a number of factors contribute to the commission of a crime. The first is a factor

that comes from or is in the person who commits the crime. This means that a person's motivation to commit a crime comes from within the person who commits the crime, and it is based on genetics and psychological factors (mental illness). The second factor is something that comes from or isn't the perpetrator's own self.

Deviant sexual behaviour in perpetrators of sexual harassment is caused by several factors, namely individual internal factors related to the perpetrator himself, the perpetrator has difficulty adjusting or the process of adapting to the times and the composition of the external environment. Sexual harassment can start from the absence of opportunities for individuals to maintain the boundaries of their personal space and not meeting the need for privacy.

As for other factors that cause a criminal act of sexual harassment to occur with the position of the victim in relation to the perpetrator, it means that the victim and the perpetrator had a previous relationship in a certain intensity measure between the victim and the perpetrator. Even in the event that there is no connection between the victim and the offender in terms of their relationship with the offender, then the percentage of the crime occurring is quite small, because the horizontal relationship between men and women has been used by men to experiment. Report from the North Sumatra Women and Children Empowerment Service's official website. In terms of cases of sexual violence, North Sumatra is said to be Indonesia's third-largest province. According to the data, there were 216 cases of sexual violence in 2019, 1,013 cases in 2020, and 953 cases in 2021 through December. It is Indonesia's third-largest. The number of cases between 2019 and 2020 appears to be quite significant based on these data. In fact, it has grown five times as much. In contrast, the number of cases typically remains constant from 2020 to 2021. He also got the information that the number of cases that were recorded was only 10% of the total number of cases that happened. As a matter of fact there are numerous different instances of sexual brutality, yet the person in question or the casualty's family don't say anything negative since it is viewed as a shame.

For the period of June to July of 2022, the Women and Children Protection Unit (PPA) Sat Reskrim Polrestabes Medan released disclosures of cases of sexual harassment or violence. However, only 21 cases could be revealed from the 55 police reports (LP) that were submitted, and the perpetrators were arrested. The information that was obtained suggests that the number of cases of child sexual and physical abuse and violence that the Medan Police receive is significantly higher. The public has a lot of questions about this. In the beginning, the disclosure represented less than half of all incoming reports.

Women and Children Empowerment Service North Sumatra has a crucial task at hand when it comes to addressing Medan's position as the third-highest city in Indonesia for the incidence of sexual violence between June and July 2022. North Sumatra Province to improve this situation. The reason is that recently there has been a case of sexual violence against a 12 year old child with the initials JA in the city of Medan. The sexual violence he got not only affected him psychologically but physically he got quite a dangerous impact due to the spread of the HIV virus. This is of course very important for the women and children protection service in the city of Medan to enforce strong laws and provide guidance to victims.

4.2 Law Enforcement for Children as Victims of Sexual Victims base on Indonesian Criminal Law

Victims of sexual violence now have legal protection from the government. The Child Protection Law's goals have been the basis for the law governing the legal protection of children who have been victims of sexual violence in Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002, children need to be protected and get special protection. This special protection is stated in Article 1 point 15 which states that "Special protection is a type of protection children receive in certain circumstances to ensure their safety from threats that could harm them or their lives as they grow and develop." According to Article 1 point 15, As the nation's next generation, children need special protection from all threats that put them in danger, including sexual crimes. One of the 19 (nineteen) rights a child has that are governed by the Child Protection Act is protection from child sexual abuse in Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002. Article 9, paragraph 1, letter a, contains guidelines for preventing sexual abuse of children, Article 15 letter f, Article 59, Article 69A, Article 71D, Article 76D and Article 81. 35 of 2014 concerning Amendments to Law no. 23 of 2002. Regulations concerning the protection of children from sexual crimes are contained in Article 9 paragraph (1) letter a, Article 15 letter f, Article 59, Article 69A, Article 71D, Article 76D and Article 81. 35 of 2014 concerning Amendments to Law no. 23 of 2002. The regulations governing the prevention of sexual crimes against children can be found in Article 9 paragraph (1) letter a, Article 15 letter f, Article 59, Article 69A, Article 71D, and Article 76D and Article 81. As stipulated in the Child Protection Act, Law no. 35 of 2014 concerning Amendments to Law NO. 23 of 2002, the manner in which child victims of sexual crimes are protected is further regulated in Article 59, where paragraph (1) stipulates that: "Children must receive special protection from the government, regional government, and other state institutions." Furthermore, paragraph (2) letter j stipulates that: "Children who are the victims of sexual crimes receive special protection." The meaning of Article 59 paragraph (2) letter J is that special protection for children is the obligation and responsibility of the Government, Regional Government and other state institutions. The child must be given special protection as mentioned in this article because the trauma of the sexual crime that happened to him will be much imprinted in his memory and will greatly interfere with his physical development and growth, especially psychologically. Anything that happens to children, particularly sexual crimes, must not be ignored by the community, the government, the regional government, other state institutions, or even the community itself. The next form of protection is contained in Article 69A which stipulates that: "Protection" Sexual offenses against children are committed with effort:

- a) education about reproductive health, morals, and religious beliefs;
- b) social adjustment;
- c) provide psychosocial support during treatment until recovery;and
- d) offering protection and assistance at every stage of the investigation, from the prosecution to the court examination.

In addition, what is stipulated in Article 59 paragraph (2) and Article 69A, in Article 71D paragraph (1) it is stated that "Every child who becomes a victim as defined in Article 59 paragraph (2), letters b, d, f, h, i, and j, has the right to submit to the court the right to restitution, which is the responsibility of the crime's perpetrator." In connection with the special protection provided by the Child Protection Law to child victims of sexual crimes, the Child Protection Law no. 35 of 2014 in Article 76D also states that no one may force a child to have sexual relations with him or any other person, either directly or through threats of violence. Because children are the nation's generation's successors, the affirmation of article 76D is, in fact, extremely necessary.

For any person who violates this prohibition according to Article 81 it is determined that:

- 1) Given a sentence that ranges from five years to fifteen years in prison, with a maximum fine of Rp. 5,000,000,000.00
- 2) The crook arrangements as alluded to in section (1) likewise apply to any individual who purposefully commits a stunt, a progression of falsehoods or convinces a kid to have sex with him or with someone else.
- 3) The penalty shall be increased by 1/3 of the criminal threat referred to in paragraph (1) if the criminal act referred to in paragraph (1) is committed by a parent, guardian, child caretaker, educator, or educational staff.

It is clear that Article 81 has added the contents of this article, unlike Article 81 in Law no. 23 of 2002 concerning Child Protection. Previously Article 81 of Law no. 23 of 2002 only consists of 2 (two) paragraphs, but with so many cases or incidents where children are victims of violence, especially sexual violence/harassment, especially cases of sexual abuse of kindergarten children at Jakarta International School, so that forced the government to make changes to Law No. 23 of 2002 by issuing Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection, by adding 1 (one) paragraph so that it becomes 3 (three) paragraphs. The basic changes made are as follows:

- 1) The criminal threat is further aggravated, especially the minimum sentence of 5 (five) years instead of 3 (three) years.
- 2) Then there is the criminal fine, which, according to the original formulation, should be at least Rp. 60,000,000.00 and a maximum of Rp. 300,000,000. to Rp. 5,000,000,000.00 The minimum limit is no longer set.

In addition, in Law no. 23 of 2004 about ending domestic violence in Chapter III, beginning with Article 5 to Article 9 regulates the "Prohibition of Domestic Violence," and individuals or those who commit domestic violence will be punished criminally in accordance with Articles 44 to 50.

Based on the fact that children are victims of sexual violence, they are the most difficult group to recover from, real-world perspective. They frequently experience acute trauma, their future will be destroyed, and those who are unable to bear the shame or disgrace will most likely take their own lives. Disgrace, feeling polluted and that barbaric incident will continue to haunt his

life. Children can become stressed, have feelings of insecurity anymore, shut themselves off from relationships because their rights to peace, confidence and calm have been taken away by the perpetrators of the crime of rape. His soul became unstable and it was very difficult to forget the case that had happened to him.

As a result, the following types of sexual violence will be discussed in this section rape, which is covered by the Criminal Code's Article 285. The formulation can see in Article 285 of the Criminal Code, stipulates several criteria to categorize an act as rape, namely:

- 1) with violence or threats of violence: not only violence is used as a means, even threats to commit violence are sufficient.
- 2) forcing women: in this case it means that there is no consent or consent from the woman.
- 3) which not his wife: if the woman who is being forced is the wife of the perpetrator himself, this does not include rape, even though there are violence/threats of violence.
- 4) to have intercourse: the meaning of sexual intercourse itself, according to R. Soesilo, is still oriented to the Netherlands, with reference to Arrest Hoge Raad dated February 5, 1912, namely: "a procedure to combine male and female genitalia in order to conceive children"

Based on what is stated in Article 285 of the Criminal Code and the requirements for determining whether or not there was an act of rape, then forms of sexual violence that do not meet the criteria above are not rape. It is clear that this narrow definition of 'rape' creates many problems for women and children who are victims.

5. CONCLUSION

Based on the discussion that took place in this study, it is possible to draw the conclusion that the principles of child protection are used because children cannot fight on their own and cannot defend their rights because many people affect their lives, so the state and society want to protect children's rights. The best interests of children must be prioritized, this is due to many things that children do not or do not know because of their age. Additionally, children who are the victims of sexual or criminal acts can receive legal protection through Law no. 23 of 2004 concerning KDRT, Article 285 of the Criminal Code refers to "rape," which is an act of sexual violence, Law no.31 of 2014 which corrected Regulation no.13 of 2006, specifically Articles 5, 8, and 9 regarding the protection of witnesses and victims, and more specifically Law No. 35 of 2014, Those who commit criminal acts of sexual abuse against children are subject to sanctions as outlined in Article 81 of the Child Protection Act of 2002, which includes Articles 9, 15, and 59 paragraph (2) letter J.

Because of the law's stringent protections against sexual violence against children, it is hoped that every victim will use it to reduce the number of cases of sexual violence in Medan and the number of victims. In addition, the sensitivity of people around such as parents and other siblings is of course very important to educate children to be able and understand the actions that occur in the child so that each child is able to speak up about what he has experienced.

References

1. Anggoman, E. (2019). Penegakan Hukum Pidana Bagi Pelaku Kekerasan Seksual Terhadap Perempuan. *Lex Crimen*, Vol.8, (No.3), p.3. <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/25631/0>
2. Antari, P,E, D. (2021). Pemenuhan Hak Anak yang mengalami kekerasan seksual berbasis Restorative Justice Pada Masyarakat Tenganan Pegringsingan, Karangasem, Bali. *Jurnal ham*, Vol.12,(No.1),p.75-94.
3. Dikdik M, dkk. (2007). *Urgensi Perlindungan Korban Kejahatan; Anatara Norma dan Realita*. Jakarta: PT. Raja Grafindo Persada, halaman 18
4. Liputan 6.com <https://www.liputan6.com/regional/read/5072688/bocah-12-tahun-di-medan-jadi-korban-pelecehan-komnas-pa-desak-polisi-tangkap-pelaku>
5. Sulaeman, M dan Homzah, S. (2010). *Kekerasan Terhadap Perempuan; Tinjauan Dalam Berbagai Disiplin Ilmu & Kasus Kekerasan*. Bandung: PT. Refika Aditama.
6. Sulistiani, S.L. (2016). *Kejahatan dan Penyimpangan Seksual dalam Perspektif Hukum Islam dan Hukum Positif Indonesia*. Bandung: Nuansa Aulia, halaman 6.
7. Surayda, H, I. (2017). *Perlindungan Hukum Terhadap Korban Kekerasan Seksual dalam Kajian Hukum Islam*. *Jurnal Ius Constiendum*, Vol.2,(No.1),p.30. <http://dx.doi.org/10.26623/jic.v2i1.543>
8. Tampubolon, W, S. (2016). *Upaya Perlindungan Hukum Bagi Konsumen Ditinjau Dari Undang-Undang Perlindungan Konsumen*. *Jurnal Ilmiah Advokasi*, Vol.4,(No.1),p.12.DOI:10.36987/jiad.v4i1.356
9. Undang-Undang Pada No. 13 Tahun 2006 tentang Perlindungan Saksi dan Korban
10. Undang-Undang Pada No. 23 Tahun 2004 Pasal 1 ayat (3) tentang Penghapusan Kekerasan dalam Rumah Tangga
11. Undang-Undang Pada No. 23 tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.
12. Undang-Undang Pada No. 27 Tahun 2004 Pasal 1 ayat (5) tentang Komisi Kebenaran dan Rekonsiliasi
13. Undang-Undang Pada No. 31 Tahun 2014 Pasal 1 ayat (3)
14. UU Mengenai Perlindungan Anak No. 35 Tahun 2014 dalam Pasal 76D
15. UU Mengenai Perlindungan Anak No. 35 Tahun 2014 tentang Perubahan Atas UU No. 23 Tahun 2002.
16. UU Mengenai Perlindungan Anak UU No. 35 Tahun 2014
17. UU No. 23 Tahun 2002
18. UU No. 35 Tahun 2014 tentang Perubahan Atas UU No. 23 Tahun 2002 tentang Perlindungan Anak
19. Wahid, A dan Irfan, M. (2011). *Perlindungan Terhadap Korban Kekerasan Seksual, Advokasi Atas Hak Asasi Perempuan*. Bandung: Refika Aditama