

SEXUAL ACTS COMMITTED BY CHILDREN

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ABSTRACT : The special criminal justice system for children certainly has a special purpose for the benefit of the future of the child and the society in which the principles of restorative justice are contained, the definition of restorative justice itself is not uniform, because there are many variations of models and forms that develop in its application. Therefore, much terminology is used to describe the concept of *restorative justice*, such as *viii communitarian justice*, *positive justice*, relational justice, *reparative justice*, and *community justice*.

KEYWORDS: *legal, copulation, criminal*

I. INTRODUCTION

Children need to be protected from the negative impacts of rapid development, globalization in the field of communication and information, advances in science and technology, and changes in the style and way of life of some parents who have brought fundamental social changes in people's lives that greatly affect children's values and behavior. (Anita Trisiana, 2019)

For example, in 2016 there was a rape and murder with a hoe handle in the trunk of the victim Eno Parihah (19 years old) whose perpetrator was a minor, namely Ral 15 years old and 2 other people. PN Tanggerang called 2 of Ral's adult colleagues, namely dead phonists. While Ral is still a minor in Fonis 10 years in prison because based on Law number 11 of 2012 article 3 letter f children are not sentenced to death / life imprisonment (Jawapos.com).

The legal rules governing the investigation of children included in 1 of the Child Law from the age of 12 to 18 years, still do not allow to send children who are only 13 years old to juvenile prison, because in Article 32 paragraph (2) letter a of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which reads that child detention can only be carried out as long as the child is 14 (fourteen) years old or more. (Prasetyo, 2015)

Basically, detention is carried out for the purpose of examination, but detention of children must also pay attention to the interests of children concerning children's growth and development, both physical, mental, and social, children and community interests. What is meant by "institution" in this provision is institutions, both government and private, in the field of children's social welfare, including orphanages, and rehabilitation homes. In the law, children are not allowed to do anything that can hinder growth and development. A child who cannot be properly cared for by his parents can result in the cancellation of parental custody. (Prakoso, 2013)

The special criminal justice system for children certainly has a special purpose for the benefit of the future of the child and the society in which the principles of restorative justice are contained, the definition of restorative justice itself is not uniform, because there are many variations of models and forms that develop in its application. Therefore, much terminology is used to describe the concept of (Prasetyo, 2015) *restorative justice*, such as *viii communitarian justice*, *positive justice*, relational justice, *reparative justice*, and *community justice*.

The application of the principles of *restorative justice* and the diversion process as an effort to resolve criminal acts committed by children even though formal juridical has been clearly and unequivocally regulated in Law Number 11 of 2012, but formally problems also arise related to the time of enactment of the law which in Article 108 states: "This Law shall enter into force after 2 (two) years from the date of promulgation" which means that this Law is new Coming into effect in July 2014, this will certainly cause problems for the resolution of crimes involving children, in addition to the readiness of all law enforcement apparatuses, community understanding, and facilities and infrastructure are supporting factors that cannot be ruled out in supporting the enactment of the law. (CRIMINAL LIABILITY, n.d.)

Police Report Number: Lp/B-630/XII/2017/Polda Lampung/Res Lambar/Spkt that on Sunday, December 24, 2017 at around 17.00 WIB in Dusun Kingdom 1 Kelurahan Purajaya Kec. Sugarcane plantation West Lampung district has committed a criminal act of sexual relations against minors against SDRI. Kenanga (victim) was carried out by Sunan, who is a 13-year-old student and by having intercourse by kissing the victim's genitals and

forcing the victim to have conjugal intercourse, when alone. Kenangan (the victim) denied that she was threatened and coerced by the complainant. As stated in Article 76 D Jo Article 81 of Law of the Republic of Indonesia Number 35 of 2014 amending Law of the Republic of Indonesia Number 23 of 2002 concerning child protection.

The existence of article 32 paragraph 2 letter a of Law Number 11 of 2012 has an impact on social factors in the investigation process, namely making it difficult for investigators in the process of investigating perpetrators to avoid during the examination process, the prejudice of victims against investigators and the injustice felt by victims.

II. RESEARCH METHODS

Based on the above problems, the problem approach used in this preparation is a normative approach where the author sees problems from the book Reform of the Juvenile Criminal System in Indonesia, a Brief Review of the Criminal System in Indonesia and Criminal Law against Children.

III. DISCUSSION

1. Legal Responsibility for This Year's Child Who Committed a Criminal Offence

Criminal liability essentially leads to an understanding of the punishment of criminal offenders. In this case, criminal liability is intended to determine whether or not a person is responsible for a criminal act that occurs. In criminal law, a principle that is closely related to criminal liability is known, namely the principle of "not punished if there is no mistake" which is the basis for the conviction of the maker. Therefore, in criminal responsibility there are two things that must be considered, namely criminal acts and criminal offenders. (Mulyana, 2017)

Speaking of criminal liability, it cannot be released with criminal acts. Because a new criminal offense means when there is criminal liability, while the definition of criminal responsibility is to pass on the objective reproach present in the criminal act and subjectively to someone who is qualified to be punished for his actions. (Fitri, 2017)

The basis for the existence of a criminal act is the principle of legality, while the basis for the conviction of the maker is the principle of guilt. That is, the perpetrator or perpetrator of the crime can only be punished if he has a mistake in committing the crime. When someone is said to have fault is a matter of concern (Flowers et al., 2019)

criminal liability. A person has a fault if at the time of committing a criminal act, from the point of view of society he can be reproached for his actions.

Criminal liability leads to the conviction of a criminal offender, if he has committed a criminal offence and fulfilled the elements prescribed by law. Judging from the point where a prohibited act occurs, a person will be held criminally liable for the act if the act is contrary to the law. Viewed from the point of responsibility ability, only someone who is capable of responsibility will be accounted for. (Fauzia & Hamdani, 2022)

Criminal liability for perpetrators of inducing children to have sexual relations is clearly regulated in article 81 paragraph (2) of Law Number 23 of 2002 concerning Child Protection, which reads: "The criminal provisions referred to in paragraph (1) apply to any person who intentionally commits fraud, a series of lies, or entices a child to have intercourse with him or with another person". The criminal provisions as referred to in paragraph (1) shall be punished with a maximum imprisonment of 15 (fifteen) years for a minimum of 3 (three) years and a maximum fine of IDR 300,000,000.00 (three hundred million rupiah) and a minimum of IDR 60,000,000.00 (sixty million rupiah). Legal protection for child victims of sexual violence can be seen in Law Number 23 of 2002 concerning Child Protection. This is regulated in Articles 59 and 64 paragraph (3). Article 59 Governments and other state institutions shall and are responsible for providing special protection to children in emergency situations, children facing the law, children from minority and isolated groups, children who are economically and/or sexually exploited, children who are trafficked, children who are victims of abuse of narcotics, alcohol, psychotropic substances and other addictive substances (drugs), children who are kidnapped, Sale and trafficking, children victims of physical and/or mental violence, children with disabilities, and children victims of abuse and neglect.

Article 64 paragraph (3) Special protection for children who are victims of criminal acts as referred to in paragraph (1) is implemented through:

- a) Rehabilitation efforts, both within the institution and outside the institution;
- b) Efforts to protect identity reporting through mass media and to avoid labeling;
- c) Provide security guarantees for victim witnesses and expert witnesses, both physical, mental, and social; and
- d) Provide accessibility to obtain information about case progress.

Criminal cases committed by children in general the provisions that are violated are criminal regulations contained in the Criminal Code, so the investigation is carried out by a general investigator, in this case an

investigator at the West Lampung Police Station.

In the juvenile criminal justice system, investigations of sexual assault cases are carried out by police investigators. Which basically states that "the investigation of children's cases is carried out by investigators established by the decision of the Chief of Police or other officials appointed by the Chief of Police". Although investigators are police investigators, not all police investigators can investigate cases of delinquent children.

The Juvenile Criminal Justice System Act is known for juvenile investigators, who are authorized to conduct investigations. This law stipulates the conditions that must be met by an investigator are having experience as an investigator, having interest, attention, dedication, and understanding of juvenile problems, and having attended technical training on juvenile justice.

Investigation itself, can be interpreted as a series of actions of investigators in terms and in the manner provided for in this law to search and collect evidence that with such evidence clarifies the criminal act that occurred and to find suspects. (Cases of child abuse, n.d.)

Actions that can be taken by investigators are arrest, detention, conducting checks at the scene, conducting searches, seizures, examining suspects/introgation, making minutes of examination (BAP), storing cases, and determining cases. Before the investigation is carried out, the first thing the investigator must do is to examine the case carefully. If, the child has not reached the age of 12 (twelve) years commits or is suspected of committing a criminal act, the investigator makes a decision to hand him back to the parent/guardian or follow him in an education, guidance, and guidance program at a government agency or LPKS in an agency that handles the field of social welfare as stipulated in Article 21 of the Juvenile Criminal Justice System Law. (Mulyana, 2017)

Investigators who handle children's cases must keep the child's identity confidential or other matters that can reveal the identity of the child in conflict with the law (in the case of news in print or electronic media), so as to avoid labeling or stigmatizing children. This reflects the legal protection of children who face the law.

Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it can be known that the purpose of arresting child defendants is for the purposes of investigation for a maximum of 1x24 (twenty-four) hours. The implementation of the arrest task is carried out by the West Lampung Special Unit for Children Resot Regency, carrying out arrest actions against suspected delinquent children, based on sufficient evidence and a limited period of time in one day.

Although there is a difference in the level of accountability between children who commit crimes in the age range under 12 years and the age range of 12-17 years, it is sometimes difficult to distinguish between sexual activity committed by children in the two age groups. Likewise, when compared to adult sexual activity. (Yoga Tursilarini, 2017)

For example, when a 15-year-old has sexual intercourse with a 13-year-old, the sexual relationship they have is like sexual intercourse committed by an adult, whether the act committed by a 15-year-old can be classified as a sexual crime. Not all sexual relations are crimes, depending on many things. Therefore, according to Howard & Marshall, there must be a distinction between evil acts or sexual assault and sexual behavior as crimes. This issue becomes very *complicated* as long as social norms undergo such changes in a country. When viewed from a criminological perspective, sexual violence committed by children against children is often also referred to as *child on child sexual abuse*, or *juvenile sex offenders*. The two terminologies above actually have the same meaning where the child of a child who is not yet 18 years old sexually assaults a child who is also not yet 18 years old. Forms of violence committed by children are not based on *consensus* between children and children. When there is agreement, the act does not fall into the category of sexual violence. (Impact of Child Sexual Violence, n.d.)

The arrest of children must be carried out humanely with due regard for age-appropriate needs, and must not use tools or weapons and other coercive efforts or measures. Child suspects should seek immediate legal assistance as provided by law. Children must also be understood as people who cannot understand the legal problems that befall them. Children arrested must be placed in a special children's service room.

The effectiveness carried out in law enforcement requires physical force to enforce the rule of law into reality based on legitimate authority. The sanctions imposed are the actualization of the legal norms of threats and promises, *that is, threats will not gain legitimacy if there is no benefit to obey or obey. Internal values* are personal judgments according to conscience and have a relationship with what is interpreted as behavioral attitudes. (Son, n.d.)

In the context of criminal law, the terminology used to define sexual violence is obscene acts as stipulated in Articles 289 to 296 of the Criminal Code. This interpretation of obscene acts is an act that violates the sense of decency, or any other heinous act, and all in the environment of sexual appetite. For example, kissing, groping public members, groping breasts, and so on; This includes copulation. But in law these things are mentioned separately. This means that in interpreting the meaning of the law, it can be interpreted, all actions if they have been considered to violate decency / decency, can be included as obscene acts. Meanwhile, the term sexual harassment refers to sexual *harassment* which is defined as unwanted attention or legally defined as "*the*

imposition of unwanted sexual demands or the creation of a sexually offensive environment".

Law Number 23 of 2002 concerning Child Protection juncto Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 does not specifically give the meaning of sexual violence against children. In addition, the law also does not explain in detail the elements of sexual violence against children. However, the law regulates criminalization acts that fall into the category of sexual violence against children, including child lewd acts and sexual acts against children.

Article 21 paragraph (1) of the Code of Criminal Procedure, the reason for detention is because there is a fear of running away, so as not to damage or eliminate evidence, so as not to repeat the crime. According to the Code of Criminal Procedure, depriving a person of liberty is not a necessity, but in order to seek the truth that a person broke the law, that person's freedom is limited by arrest and detention.

Child detention can only be carried out under the following conditions:

- a. Children aged 14 (fourteen) years or older; and
- b. Suspected of committing a crime with a prison sentence of 7 (seven) years or more.

Article 45 paragraph (2) of Law Number 3 of 1997 concerning Juvenile Justice, stipulates that the conditions of detention must be expressly stated in the detention warrant. The detention of the child, based on consideration of the interests of the child and the interests of society, must be expressly stated in the detention warrant. The detention period of child defendants is shorter than that of adults. The detention period for investigation purposes, a maximum of 7 (seven) days, for the purposes of unfinished examinations, can be extended for a maximum of 8 (eight) days.

In the context of national law as stipulated in Law Number 23 of 2002 juncto Law Number 35 of 2014 concerning Child Protection and later linked to Law Number 11 of 2012 concerning the Criminal Justice System, this Law does not distinguish criminal acts committed by children on the basis of consensual or the presence or absence of *elements of violence*. But often, male offenders are punished, with the wrong assumptions of law enforcement in harsh interpretations. The reason is, violence is always inherent in boys, even though the criminological theories described above never justify a certain gender as a perpetrator of violence. The *crude element* starts from the lowest level, namely persuasion, deception, threats of violence and violence. If any of the above elements are present, the perpetrator can be categorized as having fulfilled *the abusive element*. Then these elements can be attached to anyone, both men and women, and when one of these elements is fulfilled, a person can be categorized as having committed sexual violence and can be held criminally responsible.

Above a certain age and able to be responsible; Article 45 of the Penal Code provides that in the case of prosecuting a person who is not old enough to commit an act before the age of sixteen, the Judge may determine:

- 1) Returned to his parents, without any crime;
- 2) Handed over to the government, without any crime;
- 3) Convicted.

Furthermore, Article 47 of the Criminal Code states that:

- 1) The maximum penalty was reduced by one-third;
- 2) Sentenced to death or life, punishable by a maximum of 15 years;
- 3) Article 10 letter b, numbers 1 and 3, cannot be deleted.

A person is declared to be a person capable of responsibility:

- 1) Able to determine intentions, wills, plans = *Vornemen* for the actions to be carried out
- 2) Know or realize that his actions are considered inappropriate by society;
- 3) Knowing or realizing the meaning, meaning, essence of the deed that the deed is good or bad.

Article 44 of the Criminal Code stipulates that those who are categorized as incapable of responsibility are:

- 1) His growth of common sense is imperfect or less than perfect = IDIOT
- 2) Pain scattered.

If a person based on that category commits a criminal offense, such as committing murder, then based on Article 44 of the Criminal Code, the perpetrator is not punished but put in a mental hospital for 1 year to be cured. The determination of a person experiencing as stipulated in Article 44 of the Criminal Code, requires the assistance of a Psychiatrist.

- c) Willful or negligent conduct;

The articles in the Criminal Code do not all explicitly state intentional sentences. However, by reading the articles of the Criminal Code, it can be concluded that an act or action or activity or activity is covered with an element of intentionality.

Children's cases are handled in practice in the Court, Prosecutor's Office and at the Investigation level, it can be concluded that the handling of children's cases must be distinguished from the way adults are treated. Legal experts are beginning to abandon the repressive juvenile justice system because it has failed to correct behavior and reduce juvenile crime. The results of the evaluation that were concluded to fail to achieve the objectives of improving behavior and reducing the number of crimes committed by children became a motivation for law enforcement officials to strongly avoid the involvement of children in the judicial world of more criminal bodies, besides that it is also an encouragement, especially to parents who have direct responsibility and society in general that creates a good environment, Because the environment is the second largest influence after the family that influences the formation of children's characteristics and behavior.

Based on the testimony of child investigators from the Lampung Bara Police Investigator, they have a unidirectional view, that the repressive system of handling children's cases by imposing imprisonment, conditional sentences does not make the number of crimes that reach court decrease. In other words, there is no correlation relationship with the purpose of punishment, deterring others from repeating the same act later in life, criminals have not been a lesson for other children.

Although the child involved with the law is actually the perpetrator, the child is also categorized as a victim, the meaning of victim in this case is the victim of the negligence of his parents that caused the child to commit a criminal act. Although in the basic concept of criminal law, it is stated that people who commit crimes can be held accountable

The act, but in this case the child who is considered a victim of parental negligence causes the parents to also be responsible for the criminal acts that have been committed by their children.

Just as parents as dignified subjects of children can be categorized as having abused their power or dignity, in the explanation of Article 55 paragraph (2) the meaning of power not limited to state office can also be power between father and son, employer and labor, when parents abuse their power over children under their power and also provide opportunities in the sense of letting as an example of the above case where a Daughter does not wear Hijab, while the law prohibits such acts, but parents permit, and provide opportunities even means to drive vehicles that should be under the rule of law within the age limit are not allowed to drive vehicles, as for example in the description above the son of musician Ahmad Dhani who drove a vehicle and the accident resulted in fatalities.

The responsibility of parents for criminal acts committed by children, which indicates parents participating in or assisting legal provisions whose elements are close to the usual context of parents when children commit criminal acts is Article 56 paragraph (2) in the form of providing opportunities, facilities and information and Article 57 paragraphs (3) and (4) of the Criminal Code, which is an additional punishment for assistance equal to their own crime and a criminal determination against a maid who It counts only deliberately simplified or accelerated actions and their consequences.

However, in the case of parental involvement in the participation or assistance of criminal acts, it cannot be ascertained that the child who committed the crime is completely exempt from criminal responsibility. But if we return to the original context, that the child is a victim of parental negligence as well as a subject who cannot be held accountable, then clearly the responsibility shifts to the parent because the child is also under the control of his parents.

In dealing with the Child Issue, when the matter continues, the suspect (suspect) will be faced with the criminal system and there will be criminal sanctions that will be carried out, but when the matter is not continued, then from the beginning the investigation of the matter will be stopped using the interests of both parties where the principle of rapprochement is due to the existence of a criminal act for the future interests of both parties. In the trial process there are conditions managed for the following versions:

a. Threatened with a maximum imprisonment of 7 (seven) years

b. Not a repetition of criminal acts Article 8 paragraph (2) of Law No. 11 of 2012 states "The diversion process is carried out through deliberation involving children and their parents/guardians, victims and/or parents/guardians, community counselors, and professional social workers based on a restorative justice approach". Researchers who handle child cases in conducting diversion must consider the category of crime, the age of the child, the results of the study

Community from Father and backing milieu family and society.

According to the description above, the author concludes that Legal Responsibility for Children Who Commit Criminal Acts in Article 32 paragraph (2) of the SPPA Law states that detention of children can only be carried

out provided that the child is 14 (fourteen) years old, in addition to the criminal regulations collected in the Criminal Code (KUHP) contained in Article 287 of the Criminal Code, While the crime of sexual relations against children subsequently received a more special regulation, namely about persuading children to have intimate relations with the enactment of Article 81 paragraph (1) Jo Article 76 D of RI Law No. 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of RI Law No. 1 of 2016 concerning the Second Amendment to RI Law No. 23 of 2002 concerning Child Protection and Sexual Relations in Process Investigation, Investigation must be packaged in a family atmosphere, respect and provide the rights of children perpetrators of criminal acts as stipulated in the law and seek alternative case resolution.

2. Inhibiting Factors of Legal Responsibility of Children Who Commit Criminal Acts

Legal protection is defined as a conscious effort by every person and government, private institutions that aim to seek security, control and fulfillment of welfare in accordance with existing human rights. In essence, everyone has the right to protection from the law and children are no exception, even if children are not aware of the legal problems against them.

Laws can effectively perform their function of protecting human interests, if enforced. In other words, legal protection can be realized if the law enforcement process is carried out. In the process of investigating child cases, in this case the West Lampung Resort Police Investigator as a law enforcer must carry out law enforcement properly as a condition for the realization of legal protection for children who face the law. The success of the legal protection process for children in the investigation process at the West Lampung Resort Police is not solely about the enforcement of applicable laws, but also depends on the existence of Inhibiting Factors in the process of Legal Responsibility of Children Who Commit Criminal Acts as follows:

a. What is meant by law is the law, in the process of investigating the Children's Case at the West Lampung Resort Police, the investigator's authority coordinates with the child's public prosecutor, in terms of legal harmonization to avoid going back and forth in the investigation file. "When the child's case proceeds to the prosecution stage". So that children as perpetrators do not drift away in undergoing the investigation process because Article 32 paragraph (2) of the SPPA Law states that detention of children can only be carried out provided that the child is 14 (fourteen) years old, or suspected of committing a crime with a threat of imprisonment of seven years or more. If the above-mentioned detention period has expired, the child must be removed from custody by law.

b. Law enforcement namely parties directly involved in the field of law enforcement, investigators of the West Lampung Resort Police in carrying out their duties must be in accordance with their respective roles that have been regulated in laws and regulations. In conducting investigations into children's cases carried out by prioritizing criminal cases committed by children, in general, the provisions that are violated are criminal regulations in the Criminal Code, then investigations are carried out by general investigators, in this case police investigators. In line with this, with the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it has been affirmed that the investigation of children's cases is carried out by police investigators. The legal basis is in Article 26 paragraph (1) of the Juvenile Criminal Justice System Law which states "Investigations into child cases are carried out by investigators determined based on the Decree of the Chief of the National Police of the Republic of Indonesia or other officials ordered by the Chief of the National Police of the Republic of Indonesia".

ANCHOR

1. The Legal Responsibility of Children Who Commit Criminal Acts in Article 32 paragraph (2) of the SPPA Law states that child detention can only be carried out as long as the child is 14 (fourteen) years old, in addition to the criminal regulations compiled in the Criminal Code (KUHP) contained in Article 287 of the Criminal Code, while the crime of sexual relations against children further receives more special arrangements, namely about the persuasion of children to have intimate relations with the enactment of Article 81 paragraph (1) Jo Article 76 D of Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law of the Republic of Indonesia Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection and Criminal Acts of Copulation in the Investigation Process, Investigations must be packaged in a family atmosphere, respecting and providing the rights of children perpetrating criminal acts as stipulated in the law and seeking alternative resolutions.

2. Factors Inhibiting the Legal Responsibility of Children Who Commit Criminal Acts The implementation of Child Legal Protection of criminal offenders in the investigation process is influenced by factors; Law, Law enforcement.

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