

# LEGAL APPLICATION OF EXTRA ORDINARY ENFORCEMENT MODEL AGAINST THE PERIOD OF CRIMINAL ACTS AS A FORM OF LEGAL PROTECTION AGAINST VICTIMS OF CHILDREN UNDER THE AGE OF PANDEMI COVID -19

Nelvitia Purba, Universitas Muslim Nusantara Al Washliyah  
Mukidi, Universitas Islam Sumatera  
Marlina, Universitas Sumatera Utara  
Dedi Iskandar Batubara, Universitas Muslim Nusantara Al Washliyah  
Rudy Pramono, Universitas Pelita Harapan

## ABSTRACT

*The cases number of violence against children that occur in Indonesia is considered an indicator of the poor quality of child protection. The existence of children who have not been able to live independently, of course, really needs people as a place of refuge for children. The low quality of child protection in Indonesia has drawn attention and criticism from various levels of society. One of reasons for the occurrence of child crimes committed by children is none other than the very rapid advances in technology, for example, internet access that has developed is being misused by some children to find pornographic sites where it affects a child's behavior. Especially since the outbreak of COVID-19 pandemic virus, children's school activities have been carried out online, in this situation children's activities are more spend on the internet.*

*Methods of Data Analysis is carried out in a qualitative descriptive way, namely by describing, discussing, interpreting research findings with a viewpoint or approach in the form of normative and empirical juridical and drawing conclusions is carried out by deductive methods, namely describing general matters and then draw conclusions that are specific to the problems discussed in this study.*

*From the research results, it can be stated that protection for victims of criminal acts of rape, it is necessary to organize victim management which includes preventive, therapeutic and rehabilitation as well as imposition of extra sanctions against perpetrators of child molestation. During Covid -19 pandemic, the crime of sexual abuse against minors continued to occur and even increased. The criminal act of sexual immorality against minors causes huge losses, therefore the perpetrators of these crimes are prosecuted in extraordinary ways (extra ordinary enforcement), namely by providing extra costs to the victims of this sexual abuse, namely minors, which is different from general public so that it can increase deterrent effect on the perpetrators of this child molestation.*

**Keywords:** Deterrent Effect, Child Sexual Abuse, Extra Ordinary Enforcement

## INTRODUCTION

Rapid technological advances, for example, internet access that has developed is misused by some children to open pornographic sites where it affects a child's behavior. The criminal act of sexual immorality against children is a crime that violates morals, morals and religion, in which the crime of sexual immorality is an extra ordinary crime, which is the same as a crime of corruption that must take precedence over other crimes (Ifrani, 2017). The impact of this crime on children are causing physical and psychological trauma to victims, especially those who are

children, so that it can affect the victim's self-development when he grows up.

According to Seto Mulyadi (who is familiarly called kak Seto), Indonesian children are in the shadow of crime. Based on the records of ICPC (Indonesian Child Protection Commission) during 2011 there were 481 cases of violence. This number increased to 547 cases in 2015 where 221 cases were sexual violence, 140 physical violence, 80 psychological violence and 106 other problems<sup>1</sup>. Then in 2013 cases of sexual violence increased, the number of children who became victims, especially victims of sexual abuse, reached more than 2000 children.<sup>[2]</sup>

During Covid -19 epidemic, there were still many sexual acts against minors in Indonesia, including in Jakarta and other parts of Indonesia. During Covid-19 pandemic, West Jakarta Metro Police recorded an increase in cases of child sexual abuse in its area of almost 50 percent. "So the percentage is made there is an increase of 48 percent from 2019 to 2020," (Abdul, 2001). From 2019 to the end of 2020, according to Audie, his party has handled 29 cases of child sexual abuse. From 2019 to 2020, 29 cases of copulation with minors were recorded, the increase was based on several reasons. For example, the active role of officers in searching for information. Because cases like this are rarely monitored by parents or those closest to the victim. Several cases that may not have been observed by officers or people close to them. Previously, the police arrested an honorary teacher at a junior high school in West Jakarta who molested his own student. Ironically, this action occurred for about a year (Yopi, 2020).

According to West Jakarta Metro Police Chief Kombes Audie Latuheru in Jakarta, "One more case was carried out by an honorary teacher who taught sports since the victim was still in grade 1 of junior high school aged 13 years." Natuna Police arrested A (43) a stepfather in connection with a molestation case. A was reported on charges of rape of his stepson, let's call him Bunga aged 14 years.

In fact, the government, law enforcement officials, the community and other parties who have right to help have not been able to fully protect the child victims of sexual abuse. Justice provided by the application of law through the imposition of legal sanctions imposed on the perpetrator is unfair or not in accordance with consequences it causes. This legal injustice is said to be able to keep people who are stricken by a disaster (becoming victims of a crime) willing to deal with the world of justice.<sup>2</sup> Seeing this, in order to protect minors as victims of sexual immorality so that they are always protected and avoid feeling traumatized, "Extra Ordinary Enforcement Model is implemented, a measure to prevent criminal acts of sexual abuse against minors in the future".

## **RESEARCH METHOD**

### **Research Approach**

#### **Legislative Approach-Law**

The approach method used is juridical normative approach, juridical empirical and sociological juridical, normative juridical, namely the approach from the point of view of legal provisions or legislation, while the empirical juridical approach is the approach from the legal point of view that applies in society which is applied by law enforcement officials. As for sociological yuridis, which combines juridical normative and juridical to respond to social conditions and local community or in general (Kapolres, 2020).

#### **Concept Approach**

The current provisions of law are related to the protection of law for the rights of

children as victims of obscene acts as well as law enforcement officials in cases of legal protection of children's rights as victims of sexual immorality.

### **Data Collection Technique**

The research was conducted by means of interviews, namely conducting questions and answers with respondents or research subjects to obtain information needed by the researcher. Interviews were conducted based on the framework of problem by providing opportunities for respondents to express their opinions. Literature study, namely by tracing and studying various literatures such as books and laws and regulations. Document study, namely by searching, finding and reviewing various official documents such as court decisions and other matters relating to research issues.

### **Data Analysis Method**

Data analysis was carried out in a descriptive qualitative way, namely describing, discussing, interpreting research findings with a viewpoint or approach in the form of a normative and empirical juridical and drawing conclusions was carried out using the deductive method, namely describing general matters and then drawing conclusions that are specifically according to the problems discussed in the study.

## **DISCUSSION AND ANALYSIS**

### **Legal Protection to the Rights of Child Victims of Abuse**

The condition of children today which is very worrying should be the main concern of government and society. The reality shows that the welfare of children for now, seems still far from expectations. As we all know, there are not a few children who are victims of crime and exploited by adults, and not a few children who commit deviant acts, namely delinquency that lead to forms of criminal acts, such as drugs, liquor, fighting, vandalism, theft can even lead to murder and sexual victimization. Perspective on crime prevention does not only focus on the incidence of crime or methods used in solving the perpetrators of crime. However, another thing that is no less important to understand is the problem of crime victim itself, which in certain circumstances can trigger the emergence of crime. When talking about victims of crime, we cannot be separated from Victimology (Bambang, 2015).

A victim in the juridical sense contained in law No. 13/2006 concerning the protection of witnesses and victims is someone who has suffered physical, mental and/or economic loss as a result of a criminal act”.

Legal protection measures for children need to be implemented as early as possible, from fetus in the womb to the child aged 18 (eighteen). Starting from the complete, comprehensive, and comprehensive conception of child protection, Law Number 23 of 2002 concerning Child Protection places the obligation to provide protection to children based on the following principles:eg

- 1) Non-discrimination;
- 2) The best interests of the child;
- 3) Right to life, survival and development; and
- 4) Respect for children's opinions.

The criminal act of sexual immorality is a criminal act that contradicts and violates a person's decency and decency regarding and in relation to the genitals or other body parts that can stimulate sexual desire. For example, stroking or rubbing the penis or vagina, holding

breasts, kissing a woman's mouth (Adami, 2005). There are several forms and types of terms regarding fornication are (Apong, 2004):

- a) Exhibitionism sexual is, deliberately showing off the genitals of children.
- b) Voyeurism is, an adult kisses a child passionately.
- c) Fondling is, stroking/feeling the genitals of a child.
- d) Fellatio is, adults force children to make oral contact.

Protection of the rape crime victims, it is necessary to manage victims of the rape crime, which includes prevention, therapy and rehabilitation (Kartini, 1995). A person's attention is directed to the victim, family, environment and wider community. It is clear that the management of rape crime victims will involve many people from various disciplines (Seminar, 1991):

- 1) Prevention of rape can also be intended as the prevention of sexual problems in the future. To avoid the crime of rape, it is recommended that women not travel alone, especially at night and to places that are quiet and lonely. It is better if women also learn martial arts, just to protect themselves from people who do evil. Avoid carrying sharp weapons when traveling, if there is an attempt to rape it then act naturally, as far as possible not panic or fear.
- 2) Therapy for victims of the rape crime requires attention that is not only focused on the victim. Apart from complaints from victims, it is also necessary to listen their families complaints, information from the people who helped them for the first time and information from their environment. The need for therapy is often caused by family or environmental disturbances.
- 3) The goal of therapy for victims of the rape crime is to reduce or even eliminate their suffering. Besides that, it is also to improve their behavior, increase their ability to make and maintain their social interactions. This means that therapy given must be able to return the victim to his work or activities within his limits and his habits of social role. Therapy must be able to provide motivation and stimulation so that victims of the rape crime can do things that are productive and creative.
- 4) Rehabilitation of the rape crime victims is a physical and psychosocial act as an effort to obtain maximum function and adjustment and to prepare the victim physically, mentally and socially for their future life. Rehabilitation goals include medical, psychological and social aspects. The medical aspect aims to reduce invalidity, the psychological and social aspects aim at attaining self-adjustment, self-esteem and also achieving a healthy outlook and attitude from families and communities towards victims of the rape crime. To achieve this goal, the rape crime victims always receive intensive psychiatric medical services.

Protection of the rape crime victims cannot be separated from consequences experienced by the victim after rape. The victim not only experiences physical suffering but also experiences psychological suffering. The suffering suffered by the victim as a result of rape can be divided into:

- 1) Impact physically
- 2) Impact mentally
- 3) Impact on personal and social life

The quality of protection for children should have the same degree or level as protection for adults, because everyone has same position before the law (equality before the law). Therefore, the state together with the whole society cooperate with each other in providing adequate protection to children from various forms of violence and manipulation by irresponsible people who use children as a vehicle for their crimes, so that children become children, the nation's future generations can stand firmly in entering a life that is getting harder and harder in the future.

### **Extra Ordinary Enforcement Law to Protect Child Victims of Fornication during Covid 19 Pandemic**

During Covid-19 Pandemic, a lot of children were involved in sexual crimes, both as victims of sexual crimes and children as the perpetrators (Undang, 2002). In cases of sexual

abuse against minors, there were many problems regarding how the law was enforced, justice for the perpetrators of sexual immorality who are punished with a sentence which can be said that the punishment cannot make the behavior of perpetrators change for the better, so the victim feel that he is not getting efficient justice by crimes the perpetrator has committed against the victim, especially children under age. Law is a rule for humans, so law enforcement must provide benefits to society.

Law enforcement in a case of rape committed by an adult perpetrator against a victim who is still a minor is less efficient in reality, because there are factors that may affect law enforcement, which include the following:

### **Legal Factors**

In terms of the legal factor, this means in terms of its relation to the laws in force in Indonesia which are increasingly diverse in form and purpose and almost in everyday life people must obey these regulations.

In cases of sexual abuse of minors, law enforcers have not efficiently implemented Law No. 35/2014 on Child Protection (Febrina, 2020). In cases of sexual abuse where the victim befell a minor, this concerns the child's human rights as a victim who is not properly treated in terms of sexual violence:

- a. Anyone who deliberately commits violence or threatens violence to force a child to have intercourse with him or another person, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of Rp.300,000,000.00 (three hundred million rupiah) and at least Rp. 60,000,000.00 (sixty million rupiah).
- b. The provisions referred to in paragraph (1) shall also apply to anyone who deliberately commits a trick, a series of lies, or induces a child to have intercourse with him or other people (Seminar, 1991).

From the article above, in cases of molestation against minors, especially in ensnaring the perpetrators, not only article 285 of Criminal Code, but the article mentioned above can also be a reference for law enforcers to ensnare perpetrators where the criminal threat for perpetrators is more heavier than in Article 285 of Criminal Code or in other words, the law regarding child protection should not be ignored, but used in ensnaring the perpetrators who make children their objects.

Based on past experiences, previously sexual crimes against children were considered taboo and became a tremendous disgrace, but over time and advances in technology, sexual crimes against children have been considered something that is no longer taboo. Even perpetrators of sexual crimes against children, are perpetrators who have past trauma, of course it is still fresh in our memory as the perpetrator of sexual crime in 1996 which occurred in Jakarta, which was carried out by Robot Gedek who sodomized 8 (eight) children then killed the child, from his confession Gedek Robot admitted that he was satisfied, felt innocent and was not afraid to go to prison, let alone sin.

All this was done for the sake of sexual satisfaction and he admitted to having a headache if within a month he did not commit the act. <sup>[14]</sup> In another case that was no less exciting occurred in 2014 where the number of pedophile victims with the perpetrator Andri Sobari alias Emon, 24 years, had reached 110 children. It turns out that both Robot Gedek and Emon have past trauma in terms of sexual harassment. The rise of cases of sexual crimes has become a public concern, so the public has urged that punishment for sexual crimes be heavier and minimum provisions are increased.

Since the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which is commonly abbreviated as SPPA, which officially replaced Law Number 3 of 1997 concerning Juvenile Court, there has been a "new era" of changing the legal paradigm in juvenile criminal justice. it used to be absolute and still used the old legal paradigm approach which always emphasized that every child who commits a (criminal) act must be

rewarded with a punishment that is appropriate or we are familiar with the term "right to retaliate in kind" (ius talionis), where this approach is not far away. It is different from the treatment of adults who commit criminal acts, changing to a more humanist legal system approach which prioritizes restorative justice approach, which according to Toni Marshall is "a process in which all parties involved in a particular criminal act, collectively, -same solve the problem how dealing with consequences in the future".

So that in the future, all of us (both law enforcers, government and society) must be wiser in treating a child (perpetrator) who is faced with the law (committing a criminal act) so that the best solution for the child can be given, for the benefit of child in living his life.

Judges must also pay attention to factors regarding human rights, as well as make crimes operationally acceptable both from the position of the victim (child) and perpetrator (child). Even though in carrying out their duties of authority, the Judge encountered several obstacles, especially with regard to the criminal act of rape of children committed by children who have the same legal protection, but judges examining cases of rape must be able to consider in their decisions to regulate the rights of children who are victims and Therefore, reliable judges are needed so that they are able to overcome the obstacles they face.

The role of law in a free society is to enforce the truth and justice, namely upholding the truth and upholding justice. This can be realized if law enforcement is carried out without discrimination or favoritism and there is no discrimination or is not partial or impartial.

Efforts to prevent child victims of rape in mass media coverage can come from several institutions related to child protection, such as:

The Indonesian Child Protection Commission (ICPC) An independent state institution established in accordance with the mandate of Articles 74 to 76 of Law Number 23 of 2002 concerning Child Protection, has the duty to:

- a) Disseminating all provisions of laws and regulations relating to child protection, collecting data and information, receiving complaints from the public, conducting studies, monitoring, evaluating, and supervising the implementation of child protection.
- b) Provide reports, suggestions, input, and considerations to the President in the context of child protection.

The criminal act of molestation against minors as victims causes great losses. Therefore, the perpetrators of this criminal act are prosecuted in extraordinary ways (extra ordinary enforcement), namely by giving extra costs to the victim of this sexual immorality, namely children who are under a different age than in general, such as: providing compensation which is only sufficient. for treatment is not worth the physical and psychological suffering the victim will suffer throughout his life

Extra ordinary enforcement model is applied to create a deterrent effect as a preventive action against these child molesters.

## CONCLUSIONS

Legal protection for children who are victims of criminal acts of sexual abuse based on Law Number 23 of 2002 which has been amended by Law Number 35 of 2014 concerning Child Protection shows that the enactment of this law is expected to provide comprehensive or comprehensive protection for children who are victims obscenity, both from the aspect of criminal threats against the perpetrator, protection against discrimination treatment and protection of the legal process.

During Covid Pandemic - 19 efforts to protect the law and attitude of law enforcers in protecting against victims of sexual abuse against children, therefore the perpetrators of these crimes were prosecuted in extraordinary ways (extra ordinary enforcement), namely by providing extra costs to victims of This sexual immorality is a child who is under a different age than in general so that it can increase the deterrent effect of the perpetrator of this child molestation.

## ENDNOTES

- 1) <http://www.tempointeraktif.com/berita>, diakses pada tanggal 4 Desember 2015
- 2) <http://www.nandigramunited.blogspot.com/ppiindia-jumlah-korban-pencabulan-anak.html>, diakses pada tanggal 4 November 2015

## REFERENCES

- Abdul, W.M.I. (2001). *Protection for victims of sexual violence*. Bandung, refika aditama 2001
- Adami, C. (2005). *Criminal acts concerning decency*. Raja Grafindo. Jakarta.
- Apong, H. (2004). *Protection of children facing the law*.
- Bambang, W. (2015). Victimology of victim and witness protection, victimology is the study of why certain people are victims of crime and how lifestyles affect the chances that a certain person will fall victim to a crime. *The field of victimology can cover a wide number of disciplines, including sociology, psychology, criminal justice, law and advocacy*.
- Febrina, A. (2020). Law enforcement against children who commit the crime of obscenity in the concept of restorative justice. *Legal Journal*, 7(2).
- Ifrani, (n.d). Corruption as an extraordinary crime. *Al'Adl Journal*, 9(3).
- Kapolres, (2020). Metro jaya kombes oudie taluhuru
- Kartini, K. (1995). *Abnormal psychology and sexual abnormalities*. Mandar Maju. Bandung
- Law, Law Number 23 of 2002 on Child Protection. Child Protection Law, UU No 23, L.N No. 109 Tahun 2002, T.L.N. No. 4235 ps. 81 ayat (1)
- National seminar on legal protection aspects for rape victims, psychiatric disorders for rape victims, (1991), fakultas hukum universitas sebelas maret, Surakarta.
- Trisha, D.M., Zega, P.B.H., Siburian, S.S.M., & Rahma, Y. (2020). Juridical analysis of the crime of obscenity of minors based on law number 35 of 2014 concerning child protection. *Journal of Justice Light*, 8(1).
- Yopi, M. (2020). The number of child molestation cases in West Jakarta has increased during the Corona Pandemic, an illustration of Jakarta's sexual harassment/violence.