

Criminal Policy Concerning Imposition of Criminal Sanctions Against Child Performers

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Abstract

Child abuse is a form of crime. The Criminal Code classifies the crime of obscenity as a crime of decency. The Penal Code itself has not clearly defined the meaning of obscenity and seems to confuse its meaning with rape or sexual intercourse. The specific protection of children's rights as part of human rights is contained in Article 28B paragraph (2), according to which "every child has the right to survive, to grow up and to develop and to be protected against violence and discrimination". The protection of children in a nation's society is a measure of the nation's civilization, so it must be pursued in accordance with the capabilities of the homeland and the nation. Safeguarding activities is a legal act that has legal consequences. Therefore, legal guarantees are needed for child protection activities. Its relation to the criminal offense of sexual immorality towards same-sex minors is regulated by Article 292 of the Criminal Code (KUHP). Article 292 of the Criminal Code states that "any person of sufficient age who commits an obscene act with another person of the same sex who is known or has reasonable grounds to suspect who is not of sufficient age shall be liable to a maximum sentence of five years. The policy of the judge in child abuse cases must take into account the psychological and psychological aspects of the victim in order to lead to a decision capable of bringing justice to the victim and also to the community. Furthermore, by imposing a severe decision or in accordance with what the perpetrator of the obscenity has done, it will deter the perpetrator and deter other pedophiles from committing the crime of obscenity since the punishment they will receive will be quite is strict and has fatal consequences for their next life.

Keywords: Criminal policy, Perpetrators of child abuse

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1. Introduction

A criminal offense within the meaning of criminal law is any act that violates the wording of the criminal law provisions in terms of fulfilling the elements of the offense so that the offense can be punished. Utrecht said that a criminal event is the same as the concept of crime in the legal sense, which is defined as an event determined by law as an event leading to the imposition of a penalty. The tendency to increase crime both qualitatively and quantitatively is undeniable, this can be seen in the people in their lives, they use a way to get their needs met by committing crime, and crime is an act that various circles of society is very concerned. Fear arises not only in the community but also among the victims of the crime themselves

Child abuse is a form of crime. The Criminal Code classifies the crime of obscenity as a crime of decency. The Penal Code has not clearly defined the intent of obscenity itself, and appears to confuse its meaning with rape or sexual intercourse. Meanwhile, in the new 2017 KUHP Plan XIV PERMA Number 3, the word "copulation" was added alongside profanity and differential intercourse. Profanity does not cause pregnancy, but sexual intercourse can lead to pregnancy.

Profanity is one of the sex crimes resulting from changes occurring in the structure of our society. Obscenity is a kind of crime that has very bad effects especially for the victim because obscenity violates human rights and can hurt human dignity, especially for the soul, mind and offspring. Cases of obscene crimes are currently widespread in Indonesia. The victims of these crimes are often children.

Based on the above description, the author is interested in conducting research in the form of a legal letter entitled: "Penal Policy Regarding the Imposition of Criminal Sanctions Against Child Abusers".

2. Literature Review and Hypotheses

Litia Pratidina Sembiring (2018) entitled "Legal Protection of Children as Perpetrators of the Crime of Obscenity (Case Study Decision No. 79/Pid.Sus-anak/2015/PN-Mdn). This study found that 1) in the case of children as perpetrators of obscene crimes, Law No. 35 of 2014 amending Law No. 23 of 2002 on the Protection of Children is used to apply criminal sanctions against children who are involved with the Law conflicts with law so that the rights of the child can also be fulfilled and protected during legal proceedings, 2) the obstacles faced by judges in imposing criminal sanctions must address three (3) principles contained in the law, namely: the principle of justice, the principle of expediency and the principle of legal certainty. While protecting children who become perpetrators of sexual abuse, "Child protection is all activities to ensure and protect children and their rights so that they can live, grow up, develop and participate optimally, in accordance with human dignity, protection and protection receive violence and discrimination." , 3) In imposing criminal penalties on children who are in conflict with the law, including children who commit sexual abuse offenses, the judge has a duty to consider the needs of the child, particularly his or her Rights as a child to consider. The difference between this study and the author is that this study examines the results of the judge's decision in the case study, while the author addresses the criminal policy in relation to the imposition of criminal sanctions against child abusers and the sanctions in the court's decision on sexual abuse of minors.

3. Methods

The research method used in this research is normative legal research. Normative legal research is a process of finding legal norms, legal principles and legal doctrines to answer legal problems. Because the object of the investigation is to examine the obscenities committed by children in criminal law on the basis of legal norms and legal theory.

The research approach used is a legal approach carried out by examining all laws and regulations related to legal issues and also using a case approach, which is to draw attention to the facts and legal grounds used by judges until a decision is made by him is felled.

Sources for legal materials used in this study are secondary data, namely data obtained by researchers from library research and documents that are results of research and editing by other people that already exist in the form of books or documents, which are usually made available in libraries or owned by others. In legal research, secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials.

4. Results

A child according to Article 1 Item 1 of Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In order to guarantee a child that it can lead a normal life, the state has created a legal framework, namely Law No. 23 of 2002 on child protection.

In fact, Law No. 23 of 2002 on the protection of children is not considered effective as there is still overlap between sectoral laws and regulations regarding the definition of children and on the other hand the rampant crime against children in the community crime that is currently is mainly committed by those close to the child and the legal protections for children with disabilities have not been taken into account. Based on this paradigm, the currently applicable Law No. 23 of 2002 on the Protection of Children is amended by Law No. 35 of 2014 amending Law No. 23 of 2002 on the Protection of Children, which emphasizes the need for more severe penalties and fines for perpetrators of crimes against children, particularly sex crimes, aimed at deterrence, and promote concrete steps to restore children's physical, psychological and social well-being.

5. Discussion

Research Findings on Appropriate Sanctions for Child Molesters. Judges perform their duties in solving a case, especially in criminal cases. It is not uncommon for a case to take a long time to complete, it

can take weeks or even months and can take up to a year to be held in court or a year to be closed. The task of the judge when considering an acquittal result from § 191 paragraph 1 StPO, which states: "If the court is of the opinion that, according to the result of the interrogation in the main hearing, the guilt of the accused for the accused If actions are not proven in a legally binding and convincing manner, the accused is released".

The judge must rely on authentic evidence when considering a decision. The basis for the judge's consideration in the decision-making includes: (1) Legal Considerations; and (2) Sociological considerations.

Judicial considerations are considerations made by judges based on factors revealed at trial and determined by law as things to be included in the decision. Legal considerations, namely the indictment of the public prosecutor's office (JPU), criminal complaints, witness statements, statements of the accused, evidence.

Sociological values emphasize utility for society. The community expects that the implementation of the law must bring benefits, since the law is intended for people and therefore should not cause unrest in the community when the law is carried out.

The two considerations above must be given proportionate attention. Judges must be careful in their decisions. He must be thorough and think clearly when investigating cases and making decisions.

6. Conclusion

According to the author's analysis of the judge's judgment, there were several cases of child abuse, which only referred to the prosecutor's claims under Article 82 of Law No. 23 of 2002 on the protection of children. The perpetrators can also be accused of participation in criminal offenses under Section 55 StGB because the perpetrators can be shown to have committed a criminal obscene act against minors together. In addition, the sentence imposed by the judge is still low because the judge makes no effort to investigate and find other laws that relate to the issues, he has ruled that may have a deterrent effect on the offenders. Ideally, a judge must be able to practice "triwikrama" which is fundamentally proportional to understanding and mastering the trilogy of the legal world, which includes facticity, normativity, and legal ideals in both abstract and concrete forms, every time he faces a case for review and trial. A judicial decision is law, particularly for the accused, and becomes a widely applicable law when it becomes a case law followed by judges in deciding the same case. When a decided case is wrong and ends up becoming a jurisprudence, then what happens is that justice is not established on the basis of God Almighty as stated in the decision of every judge, especially in the implementation of the legal protections for sexual victims of Child Abuse under Law No. 23 2002 for the Protection of Children. Based on the above description, the author deems it necessary to address the issue and conduct an analysis of the decision letter in relation to cases that do not reflect justice for the victims.

There are some suggestions: (1) Decision-making in child abuse cases should be based on the very serious impact on the victim, since the act of sexual abuse violates human rights and can violate human dignity. The penalty for perpetrators of child abuse is a minimum of 5 years imprisonment and a maximum of 15 years imprisonment and a maximum fine of five billion rupiah; (2) Child victims must be protected when they are witnesses to what happened to them, in the form of guarantees in the form of safety for victim witnesses and experts, both physical, psychological and social as well as in the To give form in the form of accessibility to obtain information than efforts to form the development of the case at hand.

Penal policy is a repressive policy after a crime has been committed by establishing two central issues, namely what acts should be made criminal acts and what sanctions should be applied or imposed on the offender. While the non-criminal policy is a policy that is more about the way of preventing crime or before a crime occurs by addressing the factors of the crime.

The crime of child sexual abuse can be classified as an immoral crime that can harm the child's future. Therefore, the crime of obscenity must be dealt with seriously by law enforcement officers against child abuse as regulated by Article 82 of Law No. 23 of 2002. The sentence imposed by the judges is still low because there is no effort by the judges to investigate and find laws. it decides other laws related to the problem, which can act as a deterrent to the offender. Ideally, a judge must be able to practice "triwikrama," which is fundamentally proportional to understanding and mastering the trilogy of the legal world, which includes facticity, normativity, and legal ideals in both abstract and concrete forms, every time he faces a case for review and trial.

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