

JURIDICAL ANALYSIS OF THE ROLE OF THE POLICE OF THE REPUBLIC OF INDONESIA IN HANDLING SEXUAL VIOLENCE AGAINST CHILDREN FOR THE REALITY OF LEGAL PROTECTION IN THE CHILD JUSTICE SYSTEM (RESEARCH STUDY IN BINTAN SUB-REGIONAL POLICE)

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ABSTRACT

This study aims to determine the effectiveness of Law No. 11 of 2012 concerning the Juvenile Justice System and to find out what factors influence and hinder the role of the Police in implementing Law No. 11 of 2012 concerning the Juvenile Justice System. This study uses a combination of methods between the "legal research" normative approach and the "Juridical sociologies" empirical approach. The normative approach (legal research) is legal research regarding the enforcement or implementation of normative legal provisions (codification, laws or contracts) in action on certain legal events that occur in society and in order to obtain primary data through field research (research). Based on the results of the study, it was found that the handling of child cases in Indonesia is based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law). In Article 5 (1) of the SPPA Law, it is emphasized that the juvenile criminal justice system must prioritize a restorative justice approach. Second, the obstacles experienced by the Bintan Resort Police are the victim's reluctance to report to the police, difficult evidence, the lack of assistance provided by the family to the child as a victim so that the child experiences trauma and acute depression.

Keyword: Police, Violence against Children, Bintan.

1. INTRODUCTION

As creatures of God Almighty, children have fundamental rights like other human beings, so no human or other party can take away these rights. In the life of the nation and state, children are the future and the next generation for the ideals of the government so that every child has the right to survival, growth, and development, the right to protection from acts of violence and discrimination, as well as civil rights and freedoms [1].

In a visionary view, children are a form of investment that is an indicator of the success of a nation in carrying out development. The success of child development will determine the quality of human resources in the future. Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (after this abbreviated as UUDNRI 1945) reads that:

Recently, there have been many cases of sexual violence against children where the perpetrators are adults and people known to the victims. In general, sexual violence is the sexual satisfaction that someone causes from having sex with children obtains. Crimes of sexual violence include exhibitionism against children and manipulation of children [5].

In other words, sexual violence is a sexual act committed by an adult with a child; where the category of children

here is any child under 15 (fifteen) years of age by Indonesian regulations. The meaning of sexual violence is still often confused; whether there is an element of physical violence is often used as a criterion for categorizing acts of sexual abuse against children as crimes or not.

Sexual harassment against children itself still tends to be narrowed down, meaning that it is limited to forms of sexual contact by excluding non-contact sexual harassment forms such as pornography, whether or not an element of coercion is insignificant in cases of sexual crimes against children due to differences in understanding of sex between adults and children [6].

The practice of sexual violence will have a negative impact on children, not only physically damaging their future but also mentally and psychologically, such as major depressive disorder into adulthood. Children are a group that is very vulnerable to crimes of sexual violence because children are always positioned as weak or helpless and have a high dependence on the adults around them, this is what makes children worthless when threatened not to tell what happened. In almost every case that was uncovered, the perpetrators were people close to the victims; not least, the perpetrators were people who had domination over the victims, such as teachers, uncles, biological fathers, stepfathers, and neighbors.

There is no single specific characteristic or personality type that can be identified as a perpetrator of sexual violence against children, in other words, anyone can become a perpetrator of sexual violence against children or sexual violence. However, in social life, someone who commits violence against children is often called a pedophile. A pedophile is a person who commits sexual violence. Usually, an adult male between 30-45 years, whose condition is that they have a mental disorder, is psychopathic, alcoholic, and acts immorally [7].

The perpetrators of sexual violence must be watched out for because physically pedophiles are no different from other members of society. Pedophiles can mingle and socialize without anyone knowing the perpetrator is a pedophile until, finally, society gasps when pedophiles take their victims. This is also coupled with the difficulty of compiling a single profile of the perpetrators of sexual violence crimes so that the perpetrators are still difficult to identify and predict, let alone individuals with tendencies of sexual violence. Their criminal actions are not solely motivated by sexual motives. The perpetrators of sexual violence crimes have distorted thinking patterns and substances, fantasies, and distorted stimuli, as well as being manipulative.

In 2013 there were 2,011 cases of violence against children, 59% or 1,480 of them were reports of sexual violence. The number of reported cases of sexual violence against children increased to 1,628 cases in 2014 and 1,936 cases in 2015. From 2022 until last April, 179 cases of sexual violence were reported to KPAI. 8 Ironically, the perpetrators were the closest people who were supposed to protect children. It was recorded that 24% of the perpetrators came from families, 56% from the social environment, and as many as 17% from the school environment. This shows that children are very vulnerable to violence, especially sexual violence, based on where sexual violence occurs, mainly at home (48.7%) and schools (4.6%). Public places (6.1%), workplaces (3.0%), and other sites (37.6%), while the majority of a victim of sexual violence, are boys, with a percentage ratio of 60% boys and 40% children women [9]. The high number of cases of sexual violence against children prompted the Chairman of the National Commission for Child Protection to state that Indonesia had entered an emergency period. Sexual violence against children was a severe violation of human rights and had to be classified as an extraordinary crime because the impact it had caused threatened future generations of nations.

The ability of the perpetrator to control the victim, both by deceit and threats and violence, makes it difficult to avoid this crime, data recorded by the Indonesian Child Protection Commission (KPAI) shows that cases of sexual violence entering their institutions continue to increase. In 2013 there were 2,011 cases of violence against children, 59% or 1,480 of them were reports of sexual violence. The number of reported cases of sexual violence against children increased to 1,628 cases in 2014 and 1,936 cases in 2015. From 2022 to last April, 179 cases of sexual violence were reported to KPAI [9].

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and 40% children a women [10].

For the quick work and great concern of the Bintan Police and the work of the Bintan Police Criminal Investigation Unit, now the perpetrator has been arrested by the Bintan Police Criminal Research Unit to be held accountable. Of course, with the above cases, it is regrettable that the incident was carried out by the victim's closest family, who should protect the victim as a family member. So, on this basis, the author wishes to conduct a study entitled "JURIDICAL Analysis Of The Role Of The Police Of The Republic Of Indonesia In Handling Sexual Violence Against Children To Realize Legal Protection In The Child Justice System (Research Study At Polres Bintan)."

1.1 . Research Benefits

Referring to the formulation of the problem that the author has stated above, the author wishes to examine the Obstacles and Efforts of Juridical Analysis of the Role of the Indonesian National Police in Handling Sexual Violence Against Children for the sake of Realizing Legal Protection in the Juvenile Justice System (Research Study at the Bintan Police Station). The benefits of research conducted by the author are as follows:

a. Theoretically

With this research, it is hoped that it can be used as a reference or additional reading material that will put forward the theoretical discipline of law. Hopefully, this thesis will provide an understanding of the roles played by the National Police in Handling Cases of Sexual Violence Against Children. In addition, it is expected to be helpful as a reference or reference material in researching similar matters. Writing this thesis can assist readers in developing lecture materials and is expected to contribute new knowledge in the field of public order.

b. Practically

The results of this study are expected to provide an accurate, practical solution to the problems under investigation. In addition, as input material for practitioners who are directly involved and can uncover new theories for developing existing approaches in carrying out a policy of Laws and Regulations in the field of public order.

2. METHOD RESEARCH

The specification of this research is only to carry out analysis only up to the level of diathesis, namely analyzing and presenting facts systematically so that they can be more easily understood and concluded [30]. Research specifications or the type of research is a choice of the kinds of research formats in researching research objects in the field of law studied by researchers. In particular, according to the type, nature, and purpose, the specifications of legal research by Soerjono Soekanto are distinguished, namely normative legal research and sociological or empirical legal research [31]. The approach method in this research combines the normative approach, "legal research," with the empirical approach method, "Juridical Sociologies." The location of this research is the Bintan Police Criminal Investigation Unit, located at the Bintan Police Command Headquarters. Information is people used to providing information about the situation and conditions of the research background. In determining informants, the first thing to do is to describe the characteristics or characteristics of the object population, those selected are informants who know clearly and are by the purpose of the problem. In this case, the researcher took informants with a purposive sampling method, namely, for specific goals and reasons. As for the informants used by the author, a random technique was used, namely with the details of 2 (two) members of the Bintan Police's Women and Children's Protection Unit, 1 (one) the Head of Criminal Investigation Unit of the Bintan Police, 1 (one) victim and 3 (three) people from the community.

2.1 Data Analysis

In this study, data analysis was carried out qualitatively by describing the research, then comparing the data and legal theories, legal experts, and legislation. The analysis starts with data collection, processing, and data presentation. While concluding, we will use the deductive method, namely, the author takes data, statements, and general opinions and then draws specific conclusions [35].

3. RESULTS AND DISCUSSION

3.1 Legal Protection of Children

Children are a mandate and gift from God Almighty, which we must always protect because they have inherent dignity and rights as human beings, which must be upheld. Children's human rights are part of human rights contained in the 1945 Constitution and the United Nations Convention on the Rights of the Child. In terms of

national and state life, children are the future of the nation and the next generation of the nation's ideals, so every child has the right to survival, growth, development, and participation and is entitled to protection from acts of violence and discrimination as well as civil rights and freedom [42].

The Human Rights Law is a sequence of policy-making compiled to protect Indonesian people without exception for women, therefore, Indonesia ratified the Convention on the Elimination of All Forms of Discrimination Against Women with Law no. 7 of 1984. Violence against women does not only occur outside the family environment, but mainly it is carried out within the family. To protect women, Indonesia made laws. 23 of 2004 concerning the Elimination of Domestic Violence to prevent and overcome crime and violence against women within the family [44].

Violence against children is an intentional act that injures, harms, and causes physical, emotional/psychological, and sexual damage committed by parents or other parties. Acts of violence experienced by children are not just psychological problem that only occurs in families with broken homes, frustrated parents, and low-income families unable to bear the pressures of life. For all of us, acts of violence against children are a social problem that requires collective attention from all levels of society because the victims of this incident are not only experienced by one or two family units or simply an expression of deviant behavior in a frustrating family environment, but the number of children who become victims and who are the perpetrators can be said to have crossed geographical and community boundaries, it can happen to anyone and anywhere [46].

The goals and rationale for the legal protection of children cannot be separated from the purpose of realizing child welfare as an integral part and social welfare as a whole. Children are the next generation of the nation because on their shoulders lie the tasks of the government that previous generations have not completed. As the next generation for the ideals of the government and state, children must grow and develop into adults who are physically and mentally healthy, intelligent, educated, and have good morals. Child protection is an absolute thing to pay attention to.

3.2 Sexual Violence Against Children

The WHO definition of violence against children includes all forms of physical and emotional abuse, sexual abuse, neglect, and exploitation that impact or have the potential to harm a child's health, child development, or child's self-esteem in the context of a relationship of responsibility. Based on this definition, child abuse can be in the form of physical violence, sexual violence, and emotional or psychological violence [51].

According to Balck's Law Dictionary, what is meant by Child Sexual Abuse or sexual violence is illegal sexual activity committed against a person who is underage by parents, guardians/caregivers, relatives, or people he knows. Meanwhile, according to Fontana, as quoted by Goddard, violence against children or child abuse is the mistreatment of children physically and carried out by adults, which causes trauma to children and even leads to death [53].

According to Suharto's formulation and the results of the Child Consultation on Violence Against Children in 18 Provinces and Nationally, the forms of violence that occur to children [56].

1. Physical abuse is violence in the form of torture, beating, and mistreatment of children, with or without the use of particular objects that cause physical injuries or death to children.
2. Psychological violence (mental abuse) is violence that includes rebuke, delivery of harsh and dirty words, and showing pornographic books, pictures, and films to children.
3. Sexual violence (sexual abuse) is in the form of pre-sexual sexual contact between children and people who use more words, touch, sexual images, and exhibitionism, as well as direct sexual communication between children and adults (incest, rape, sexual exploitation).
4. Social violence (social abuse) includes child exploitation and neglect.
5. Violence caused by Traditions or Customs, such as being forced to marry at a young age for girls, getting betrothed, and cutting off fingers if a relative dies.

3.3 Factors of Sexual Violence Against Children

There are several factors in the occurrence of acts of violence against children, namely the child's characteristics, the characteristics of the perpetrators of violence, the physical environment, and culture. Nugroho's research, as cited by Purnianti, shows that the triggering factors for violence against children include the result of parents being used to receiving violence from a young age (so they tend to imitate the parenting styles they have received before),

problems in marital relations, parents' inability to control their emotions, parents lack understanding of aspects of child development, lack of social support, children with disabilities, unwanted children (pregnant out of wedlock), and the birth of a child which almost took the life of the mother so that the child is believed to be a child who brings bad luck.

There are several reasons why children are often the target of sexual violence, namely:

1. Children are always in a weaker and helpless position
2. Morality in society, especially in this case, is that perpetrators of sexual violence are low
3. Control and awareness on the part of parents in anticipating criminal acts in children is still low

3.4 Law Enforcement of Violence Against Children

In principle, fostering and enforcing the law in Indonesia is more challenging than reading and accepting materials or concepts contained or contained in the legislation. Upholding the law and eradicating crime is not enough based on the law alone, but it must also be viewed from cultural, moral, and religious aspects, even legal scholars argue that punishment is the last remedy or final punishment. Herbert L. Packer mentions several things as follows:

1. Criminal sanctions are indispensable, we cannot live in the present or the future without punishment (criminal sanction is indispensable, we could not, now or in the foreseeable future, get along without it).
2. Criminal sanctions are the best available tools or means to deal with threats of harm (criminal sanctions are the best available devices for dealing with gross and immediate harm and threats of harm).
3. Once upon a time, criminal sanctions were the "main/best guarantor" of human freedom. It is a guarantor if it is used carefully and humanely, it is a threat if it is used indiscriminately and also by force (the criminal sanction is at once prime guarantor, if used indiscriminately and coercively, it is threatening

3.5 The Role Of The Indonesian Police In Handling Cases Of Sexual Violence Against Children

Regarding handling cases of sexual violence against children that occurred at the Bintan Resort Police, according to the Head of the Criminal Investigation Unit at the Bintan Police, several cases occurred and were handled by applicable laws and regulations. The Women and Children Protection Unit assists victims undergoing processing at the Bintan Resort Police. In handling cases of sexual violence involving victims who were underage investigators at the Bintan Police, they were cautious not to cause the victim to experience depression as a result of the treatment he received. Therefore, examinations are always carried out behind closed doors, and victims are always accompanied by their parents or guardians.

The form of child protection provided by the Child Protection Act and the Law on the Elimination of Domestic Violence and the Juvenile Criminal Justice System is an adoption, compilation, or reformulation of the forms of child protection that have been regulated in the Criminal Code. In the Criminal Code, several articles protect children against sexual violence, protection for children is indicated by the provision of criminal sanctions (sanctions) for the perpetrators. Criminal sanctions in cases of sexual violence against children should not only be based on the Criminal Code (KUHP) and the law on child protection. Still, they can also be subject to criminal sanctions by Law Number 39 of 1999 concerning Human Rights.

3.6 Polri's Inhibiting Factors And Solutions For Handling Cases Of Sex Violence In Children

According to the Bintan Resorts Women and Children Protection Unit, there are several police obstacles in handling sexual violence against children, especially those that occur at the Bintan Resort Police, namely:

1. Victims are reluctant to report to the Police

The number of cases of sexual violence is the second highest compared to other forms of violence. The community hopes there will be a law that becomes the legal umbrella for cases of sexual violence and can deal with this comprehensively because considering that cases of sexual violence are difficult to process. According to the Women's Journal, it is known that there are still many victims who are reluctant to report sexual violence because of sociocultural problems in society [84].

2. Difficult proof

One of the human rights of citizens that the state must fulfill is the right to get a fair settlement of cases. In Criminal Law, the settlement of a claim must satisfy the due process of law through a court that is free from any influence and anyone. To achieve the owing process of law properly, one of the things needed is to carry out an excellent evidentiary process. One of the obstacles in handling sexual violence against children faced by

the Bintan Police is the difficulty in proving cases of sexual violence against children. This is because the incident only involved perpetrators and victims of sexual violence, namely children [85].

To overcome the barriers to proof as referred to above, according to members of the Women and Children Protection Unit of the Bintan Resort Police, what is being done is through a persuasive approach to children as victims of sexual violence by providing assistance and guidance to foster children's confidence, so they want to tell about incidents of sexual violence what happened to him to investigators [86].

3. Family Assistance

One of the obstacles in handling the crime of sexual violence against children in the Bintan Police is the lack of assistance provided by the family to the child as a victim so that the child experiences acute depression [89].

4. Trauma experienced by children as victims

Another obstacle in handling cases of sexual violence against children at the Bintan Resort Police is the psychological impact on children, which causes profound trauma so that children as victims tend to find it difficult to disclose the incidents of sexual violence they have experienced [91].

In line with the above, violence against children can be seen from several perspectives, including the following:

- a. Psychological perspective, which sees that violence that happens to children is caused by the poor psychological aspects of parents or caregivers. It could be that parents have personality disorders or experience one type of mental disorder that affects parenting. This affects the lack of empathy for others, especially children, weak tolerance, and high expectations. Parents lack education, especially about discipline and children's development, or they experience emotional and cognitive disorders when they are children.
- b. A sociological perspective that pays attention to the social context of violence compared to the parents' personality. Environmental accumulations such as poverty, unemployment, living conditions, alienation, and other factors can lead to violence.
- c. A socio-situational perspective that sees the interaction between children and perpetrators as a determinant of violence. This perspective considers a child's special attributes, such as disability, temperament, or behavior, as parental pressure that hinders positive bonds between parents and children.
- d. An interactive perspective which states that all of the above perspectives are interrelated in incidents of violence against children

4. CONCLUSIONS

Based on the discussion that has been carried out, the following conclusions are conveyed from the results of the research that the author has done:

1. Related to the Juridical Analysis of the Role of the Police of the Republic of Indonesia in Handling Sexual Violence Against Children for the sake of Realizing Legal Protection in the Juvenile Justice System, based on the research results, applicable laws and regulations have been carried out. Handling related to sexual violence against children at the Bintan Resort Police does not only involve the Women and Children Protection Unit of the Bintan Police Criminal Investigation Unit but also involves related agencies in charge of Women's Protection and Fulfillment of Children's Rights.
2. Regarding Obstacles to the Role of the National Police in Handling Sexual Violence Against Children for the sake of Realizing Legal Protection in the Juvenile Justice System, based on the results of the research, several obstacles were found, including Victims reluctant to report to the Police Proving is difficult, Assistance is carried out by the Family, Trauma experienced by children as a victim

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