

## The Construction of the Criminal Legal Process of Obscenity by Child Actors against Child Victims

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**Abstract:** *The purpose of this research is to examine and analyze the criminal construction of the legal process of obscenity by child perpetrators against child victims. The approach method used in this paper is normative juridical. The specification of this writing is descriptive analytical. Cases of sexual intercourse with minors by minors where this is included in a crime of decency which is very worrying and creates a psychological effect on the victim who is also a minor, so the handling of this crime must be handled seriously. How the treatment is given if it is a child who commits the crime of obscenity. This is often a polemic about how treatment should be given. Will the child receive the same treatment as an adult who committed the crime? Child delinquency is a social and at the same time legal problem that already exists and grows with the development of religious, social and legal community civilization. Structurally, the social factors present in society will provide a detailed explanation of the problem of child crime as perpetrators, victims arising from crime and/or social reactions from crimes against the social environment.*

**Keywords:** Abuse; Child; Perpetrators; Victims.

### 1. Introduction

Indonesia is a country that upholds the law. Law is the power that regulates and compels and has strict sanctions for those who break it. In essence, the purpose of creating law is to create harmony and peace in the social life of society. However, in reality, various crimes still emerge in society. This shows that the purpose of the law has not been fully realized.<sup>1</sup>

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<sup>1</sup> Erwin Chan and Jawade Hafidz, Policy For Crime Murder Investigation By The Children In Polrestabes Semarang, Journal of Daulat Hukum Volume 3 Issue 1, (2020), p.27

Today along with modernization in all areas of people's lives, it cannot be denied that it has indirectly changed human behavior. Moreover, at the stage of national development in all fields it also stimulates the emergence of changes in socio-cultural values. Social development and change can bring positive consequences such as increased development in all areas of life, but can also bring negative consequences by the emergence of various types of crimes such as theft, rape, domestic violence, and sexual abuse of minors.<sup>2</sup>

Crime as a form of human behavior is very detrimental to society, because it threatens the norms that underlie life or social order can cause individual tensions, as well as social tensions. The reason for the recognition of the existence of this crime is because crime is a form of human behavior that is very detrimental to society, such as crimes of decency which include rape, obscenity, sexual harassment and others. Crime of decency (*misdrijven tegen de zeden*)<sup>3</sup> is a crime that has received sufficient attention among the public, as can be seen from the frequent reports on the crime of rape and obscenity in electronic and print media.

Sexual abuse is a type of crime that has a very bad impact, especially on the victims, because sexual abuse violates human rights and can damage human dignity, especially to the soul, mind and offspring. Obscenity is an act that is indecent in the sexual field, for example groping the genitals in public which causes arousal.<sup>4</sup> Victims in these crimes are often children.

How the treatment is given if it is a child who commits the crime of obscenity. This is often a polemic about how treatment should be given. Will the child receive the same treatment as an adult who committed the crime? The purpose of the author's research is to examine and analyze the criminal construction of the legal process of obscenity by child perpetrators against child victims.

## 2. Research Methods

To conduct an assessment in this writing the author uses a normative juridical approach or a written legal approach (statutory approach).<sup>5</sup> Writing specifications are carried out using a descriptive analytical approach. The data used for this

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<sup>2</sup>Danang Sucahyo and Aryani Witasari. The Diversion in Law Enforcement of Criminal Action of Children in the Judicial System of Children. *Journal of Sovereign Law* Volume 4 Issue 1, (2021), p.253

<sup>3</sup>M. Khairida, Syahrizal, & Din. Law Enforcement of the Perpetrators of the Crime of Sexual Abuse against Children in the Jinayat Justice System. *Syah Kuala Law Journal*, Vol.1 Number 2, (2017), p.171.

<sup>4</sup>Andi Hamza. 2009, *Criminal Law Terminology*. Jakarta: Sinar Graphics. p. 32.

<sup>5</sup>Soemitro. 1998. *Legal and Jurimetric Research Methodology*, Jakarta, Ghalia Indonesia, p. 24

writing is secondary data. The main data collection method used in the literature study is secondary data obtained from library books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed with qualitative analysis.

### **3. Results and Discussion**

#### **3.1. Factors Occurrence of Obscene Acts**

The moral problem is a problem that is of concern to humans everywhere, both in advanced societies and in societies that are still underdeveloped. Because a person's moral decay can disturb the peace/order of other people or other communities, because if in a society there are many people who are morally corrupt, the condition of society itself will shake.

Another fact in life that has also pushed people/society into anxiety is the amount of fraud, injustice, evil and disobedience which causes no peace and happiness in the household and society in general. Honesty, truth, justice and courage have been covered by abuses, both light and heavy. For example, one example is the increasing number of violations against decency crimes, especially regarding the crime of obscenity which has recently occurred, the community remains calm, which shows that moral values or sexual values in society has changed.<sup>6</sup>

#### **3.2. Children in Confrontation with the Law**

In the Law what is meant by children in Article 1 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System determines as follows:

- a. Children who are in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts.
- b. A child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime.
- c. A child who is a victim of a crime, hereinafter referred to as a child victim, is a child under the age of 18 (eighteen) years who experiences physical, mental and/or economic loss caused by a crime.
- d. A child who is a witness to a crime, hereinafter referred to as a child witness, is a child who is not yet 18 (eighteen) years old who can provide information for the purposes of investigation, prosecution and examination at a court hearing regarding a criminal case that has been heard, seen and/or experienced. Alone.

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<sup>6</sup>Zakiah Darajad. 1999, Fostering Indonesian Moral Values, Bulan Bintang, p.9

Children who are dealing with the law or children who are in conflict with the law are those who are directly related to criminal acts, both as victims and witnesses in a crime. There are also differences in the behavior or unlawful acts of children and adults which cannot be equated, where an act committed by a child may be an unlawful act, but for an adult it is not an unlawful act, or vice versa.<sup>7</sup>

### **3.3. Construction of the Criminal Legal Process of Obscenity by Child Actors Against Child Victims**

The criminal act of obscenity is included in the complaint offense. Complaint offenses are divided into two forms, namely absolute complaint offenses and relative complaint offenses. Obscenity is included in the absolute complaint offense, which means a criminal act whose prosecution can only be carried out if there are complaints from certain parties.

Comparison between Obscenity and Rape, if the criminal act of obscenity according to Article 289 of the Criminal Code states that it was not indicated that it was committed against a woman or a man, within marriage or outside marriage. Article 76E of Law Number 35 of 2014 concerning Child Protection states that obscenity can be done through violence, threats of violence, forcing, doing or allowing, a series of lies to commit obscenity, then in cases of obscenity the victim is still a minor. While the crime of rape according to Article 285 of the Criminal Code, it is indicated that the act was committed against a woman outside of marriage.<sup>8</sup>

Provisions on child crime or what is called child delinquency is defined as a form of crime committed by children in specific titles from the Criminal Code and or the statutory regulations. Child delinquency is a social and at the same time legal problem that already exists and grows with the development of religious, social and legal community civilization.

Structurally, the social factors present in society will provide a detailed explanation of the problem of child crime as perpetrators, victims arising from crime and/or social reactions from crimes against the social environment. Child delinquency gives a specific form of crime committed by a child as a cause of the factors of crime and violations contained in the child himself or factors in the social environment where the child is located.

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<sup>7</sup>Harry E. Allen and Clifford E. Simonsen, 2003, in Purniati, Mamik, Sri Supatmi, and Ni Made Martini Tinduk, Correction in America An Introduction, Situation Analysis of the Juvenile Justice System in Indonesia, Jakarta, UNICEF, p. 2

<sup>8</sup>Ida Bagus Gede Subawa and Putu Sekarwangi Saraswati, Criminological Study of the Criminal Acts of Obscenity Against Children in the Legal Area of the Denpasar Police. KERTHA WICAKSANA: Means of Communication for Lecturers and Students, Volume 15 Number 2, (2021), p.172

Hart Rossi defines sexual harassment as an act that involves an adult as the perpetrator of the abuse, but abuse can also occur "when a child is used as an object of sexual gratification by another child under the age of 18 (eighteen) years who takes over the temporary duties of the parents" .<sup>9</sup>

The application of criminal sanctions against perpetrators of criminal acts of obscenity is not only against adults, but also applies to children who are perpetrators of criminal acts of obscenity. In the case of children as perpetrators of criminal acts of obscenity, the SPPA Law (Children's Criminal Justice System Law) is used to apply criminal sanctions to children who are in conflict with the law. The reason for using the SPPA Law in this case is that children's rights while undergoing the legal process can still be fulfilled and protected. A child in conflict with the law is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime.<sup>10</sup>

According to the Law on the Juvenile Criminal Justice System, an offender of a child crime can be subject to two types of sanctions, namely action, for perpetrators of crimes under the age of 14 (Article 69 paragraph (2) of the SPPA Law) and crimes, for perpetrators of crimes who are aged 15 years and over.<sup>11</sup>

1. Action sanctions that can be imposed on children include:
  - a) Returns to parents/guardians;
  - b) surrender to someone;
  - c) Treatment in a mental hospital;
  - d) Treatment at LPKS;
  - e) Obligation to attend formal education and/or training held by the government or private bodies;
  - f) Revocation of driving license; and/or
  - g) Improvements due to criminal acts;
  - h) Criminal sanctions.<sup>12</sup>
2. Criminal sanctions that can be imposed on juvenile offenders are divided into Principal Crimes and Additional Crimes:
  - a. Principal Crimes consist of:
    - 1) Warning sentence;
    - 2) Criminal with conditions, consisting of: coaching outside the institution, community service, or supervision;
    - 3) Work training;
    - 4) Institutional coaching;

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<sup>9</sup>Michael Gurian, 1996, *The Wonder of Boys: How to Raise Boys to Become Real Men*, Jakarta: Serambi, p.420.

<sup>10</sup>Article 1 point 3 of the Act No. 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>11</sup>Febrina Annisa, *Law Enforcement Against Children Who Commit the Crime of Obscenity in the Concept of Restorative Justice*, ADIL: Jurnal Hukum Vol. 7 No.2, (2016), p.208

<sup>12</sup>Article 82 of the Act No. 11 of 2012 concerning the Juvenile Criminal Justice System

- 5) Prison.
- b. Additional Punishment consists of:
  - 1) Deprivation of profits derived from criminal acts; or
  - 2) Fulfillment of customary obligations.<sup>13</sup>

In addition, the SPPA Law also stipulates that in the event that a child under the age of 12 (twelve) commits or is suspected of committing a crime, investigators, community counselors and professional social workers make decisions to:

1. Give it back to the parents/guardians; or
2. Include them in educational, coaching and mentoring programs at government agencies or LPKS in agencies dealing with the social welfare sector, both at the central and regional levels, for a maximum of 6 (six) months.<sup>14</sup>

In the juridical explanation above, it provides a substance that regulates a child as a perpetrator of a crime with the provisions of the sanctions given originating from the references to the juvenile criminal justice procedure (UU SPPA). As for the specifications for the elements of child perpetrators who commit sexual abuse against child victims, they are included in the provisions of the Child Protection Act (UUPA). In the case of a child who commits a criminal act of obscenity by first seducing the victim, then this act violates Article 76E UUPA, which states:

"Everyone is prohibited from committing violence or threats of violence, forcing, tricking, committing a series of lies or persuading a child to commit or allow obscene acts to be carried out."

The penalties for violating Article 76E of the UUPA, regulated in Article 82 of the UUPA are:

- 1) Everyone who violates the provisions referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.- (five billion rupiahs);
- 2) In the event that the crime referred to in paragraph (1) is committed by parents, guardians, caregivers, educators or educational staff, the penalty shall be added to 1/3 (one third) of the criminal penalties referred to in paragraph (1).<sup>15</sup>

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<sup>13</sup>Article 71 of the Act No. 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>14</sup>Article 21 of the Act No. 11 of 2012 concerning the Juvenile Criminal Justice System

<sup>15</sup>Article 82 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

Children who commit criminal acts of obscenity can be held criminally responsible if they reach 14 (fourteen) years of age. If at the time of committing the crime the child is over 12 (twelve) years old, but has not reached the age of 14 (fourteen) years, then the penalty that can be given to the child is a maximum of 1/2 (half) of the adult prison sentence. <sup>16</sup>However, if the crime committed by the child is punishable by death or life imprisonment, then the sentence imposed is imprisonment for a maximum of 10 (ten) years.

In this case, it can be concluded that child protection as a victim or perpetrator of a crime of sexual violence has the right to keep their identity secret so that it is not known by the wider community. This Child Protection Act emphasizes that the responsibilities of parents, family, society, government and the state are a series of activities that are carried out continuously for the protection of children's rights.<sup>17</sup>These series of activities must be sustainable and directed to ensure the growth and development of children, both physically, mentally, spiritually and socially. This action is intended to create the best life for children who are expected to be the nation's successors who are potential, tough, have nationalism imbued with noble character and Pancasila values.

In the theory of punishment, there is a description known as the theory of correction. The only punishment that can be accepted by the world of education is punishment that is corrective, punishment that can make children aware of the mistakes they have made. And with this realization, the child will promise in his own heart not to repeat his mistake again. Such punishment is desired by the world of education. Corrective punishment is also called educational punishment or pedagogical punishment.<sup>18</sup>

#### **4. Conclusion**

Child delinquency is a social and at the same time legal problem that already exists and grows with the development of religious, social and legal community civilization. According to the Law on the Juvenile Criminal Justice System, an offender of a child crime can be subject to two types of sanctions, namely action, for perpetrators of crimes under the age of 14 (Article 69 paragraph (2) of the SPPA Law) and crimes, for perpetrators of crimes who are aged 15 years and over. Action sanctions that can be imposed on children include: return to parents/guardians; surrender to someone; treatment in a mental hospital; treatment at LPKS; the obligation to attend formal education and/or training held

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<sup>16</sup>I. Setiawan, The Crime of Rape in a Review of Indonesian Criminal Law. Galuh Justisi Scientific Journal, Vol.6 No.2, (2018), p.227

<sup>17</sup>Adam Sani, Rusjdi Ali Muhammad, and Moh.Din, Criminalization of Children According to Conceptions of Islamic Law and Indonesian Criminal Law, Journal of Legal Studies, Volume 3, No. 3, (2015), p.188

<sup>18</sup>ADIndrakusuma, 1973. Introduction to Science. Malang: Faculty of Education, IKIP Malang, p. 151

by the government or private bodies; revocation of driving license; and/or improvement as a result of a crime; criminal sanctions.

## 5. References

Adam Sani, Rusjdi Ali Muhammad, and Moh.Din, Criminalization of Children According to Conceptions of Islamic Law and Indonesian Criminal Law, *Journal of Legal Studies*, Volume 3, No. 3, (2015)

ADIndrakusuma, 1973. *Introduction to Science*. Malang: Faculty of Education, IKIP Malang

Andi Hamzah. 2009, *Criminal Law Terminology*. Jakarta: Sinar Graphics

Danang Sucahyo and Aryani Witasari. The Diversion in Law Enforcement of Criminal Action of Children in the Judicial System of Children. *Journal of Sovereign Law* Volume 4 Issue 1, (2021)

Erwin Chan and Jawade Hafidz, Policy For Crime Murder Investigation By The Children In Polrestabes Semarang, *Journal of Daulat Hukum* Volume 3 Issue 1, (2020)

Febrina Annisa, Law Enforcement Against Children Who Commit the Crime of Obscenity in the Concept of Restorative Justice, *ADIL: Jurnal Hukum* Vol. 7 No.2, (2016)

Harry E. Allen and Clifford E. Simmons, 2003, in Purniati, Mamik, Sri Supatmi, and Ni Made Martini Tinduk, *Correction in America An Introduction, Situation Analysis of the Juvenile Justice System in Indonesia*, Jakarta, UNICEF

I. Setiawan, The Crime of Rape in a Review of Indonesian Criminal Law. *Galuh Justisi Scientific Journal*, Vol.6 No.2, (2018)

Ida Bagus Gede Subawa and Putu Sekarwangi Saraswati, Criminological Study of the Criminal Acts of Obscenity Against Children in the Legal Area of the Denpasar Police. *KERTHA WICAKSANA: Means of Communication for Lecturers and Students*, Volume 15 Number 2, (2021)

M. Khairida, Syahrizal, & Din. Law Enforcement of the Perpetrators of the Crime of Sexual Abuse against Children in the Jinayat Justice System. *Syah Kuala Law Journal*, Vol.1 Number 2, (2017)

Michael Gurian, 1996, *The Wonder of Boys: How to Raise Boys to Become Real*



Men, Jakarta: Serambi

Soemitro. 1998. Legal and Jurimetric Research Methodology, Jakarta, Ghalia  
Indonesia

Zakiah Darajad. 1999, Fostering Indonesian Moral Values, Crescent Star