

A Plot Twist: Dating Sexual Behavior Becomes Child Sexual Abuse

(A Case Study of the Juvenile Offenders in East Java, Indonesia)

Dewi Mirna Fitri Nur Cahyani^{1,*} Permatasari Elok²

¹The Ministry of Law and Human Rights-Bapas Kelas II Madiun, Indonesia

²State University of Jember, Indonesia

*Corresponding author. Email: mirnafitri.ncd@gmail.com

ABSTRACT

Dating sexual behavior does not merely put adolescents into risky sexual behavior, but now it also puts them into a serious potential of crime. Since the dating sexual behavior with an underaged dating partner can be categorized as a child sexual abuse. It is because a person who is under 18 years old is classified as a child in the Indonesian legal system. Although juvenile offenders will be tried differently with an adult. But the high criminal threat of child sexual abuse caused the practice of restorative justice through Diversion unable to be applied to this case. A case study research which conducted on seven cases in the seven districts in East Java, provides depth information about the law enforcement process of some adolescents, who experienced dating sexual behavior with their partner, but then being judged and jailed as a child sexual abuser. The main background of the cases was the lack of understanding about sexual information and limited access to sexual education providers. All of the informants claimed that they never get any sexual education from their parents or teachers. Furthermore, these juvenile offenders said that they do not even know if their acts are a form of serious crime. In some cases, also found that there was no element of strong coercion against the victim. Imprisonment is the common judgment given by the judges, with a duration minimum of 2 years and a maximum of 4 years. It is also evident that most of the law enforcers (police, prosecutors, lawyers, social workers, and judges) had poor knowledge and skill about sexual abuse treatment. This limited knowledge and skill finally lead to provide incorrect services to both juvenile offenders and the victims, that raise unpleasant feeling to them. It reinforces the urgencies of effective prevention efforts, to protect adolescents who are placed in a very high risk, due to the vulnerable phase in their development process. The adolescents-friendly approach of case management on dating sexual violence by juvenile offenders had to be regulated. The implementation of integrated training for law enforcers also very important, to increase their competencies in dealing with adolescents, especially with the sexual violence cases.

Keywords: *dating sexual behavior, child sexual abuse, juvenile offenders, adolescents, psycho-sexual problems.*

1. INTRODUCTION

The appearance of dating is not unusual among teenagers. Ironically, dating allows them to contact with sexually active behaviors. Dating behavior with risky sexual contact is easily stimulated by the hormonal conditions of adolescent sexual development at puberty [1]. Adolescent's lack of understanding of sexual and reproductive health places adolescents in a position to have no clear

boundaries in their sexual behavior. Sexual education has a role in increasing responsibility and controls the possibility of sexual behavior among adolescents.

The lack of comprehensive sexual education by parents and teachers to adolescents increases the risk of adolescents accessing risky sexual behavior [2]. Adolescent sexual contact can be in various forms of behavior i.e getting attracted, dating, holding hands, hugging, kissing, squeeze breasts, rubbing partner's

genitals, having intercourse, or sexual intercourse [3]. Dating status affects the incidence of risky dating behavior in adolescents. Risky sexual behavior has a greater chance of occurring in dating relationships.[4]. About 73.4% of adolescents in Indonesia started dating at the age of 10, while 33% of adolescents who were dating committed premarital sexual. [5], [6].

Most adolescents have experienced sexual violence in dating, whether of unwanted physical contact, sexual harassment, and rape. Girls experienced more sexual violence than boys, but they did not consider it a form of sexual violence and maintained their relationship with their boyfriends. On the other hand, for adolescents, these things are normal in dating [7]. This shows the fact that, although dating behavior can place adolescents as perpetrators or victims of sexual violence, they are unable to recognize that it is a form of crime.

However, parents and society have a different understanding of dating sexual behavior in adolescents. Usually, girls are judged harder than boys according to their involvement in various types of sexual behavior. As a result, men have better sexual freedom and willing. Boys are more likely to carry out sexual violence than girls and occur conveniently in dating relationships [8].

Social control over this dating behavior also exerts significant influence. People often consider dating and sexual violence to be two things that are not interrelated. Sexual violence is considered a nonconsensual activity that is committed outside dating relationships [9]. This condition causes teenage boys to be vulnerable to being reported (involved in the law) because they are considered as perpetrators of sexual violence. Meanwhile, it is girls who are victims of sexual violence. Even from the perspective of adolescents, neither boys nor girls are able to properly recognize that behavior constitutes sexual violence [10]. Reports of sexual intercourse by a male against a female were recorded in larger numbers. This is an important basis for conducting a more in-depth analysis of how dating behavior can make them juvenile offenders.

2. RESEARCH METHOD

This study aims to provide an overview of the impact of risky sexual behavior in dating can cause adolescents to become juvenile offenders. This research uses a qualitative approach using a descriptive qualitative design with a case study method. A case study is a research that focuses on a

particular case to be observed and depth analyzed. This study focuses on cases data of intercourse committed by adolescents in a dating relationship and has received an imprisonment judgment from the juvenile's court. The data source uses secondary data obtained from 7 Balai Pemasyarakatan (correctional community centers) in East Java. This study conducts an in-depth examination of the particular background behind adolescents taking action that has a legal consequence, the pattern of events that occur to the role of individual characteristics in the occurrence of these cases. This study aims for an in-depth exploration of how the process of risky sexual behavior in dating adolescents can become a high-level crime. The informants in this study were adolescents who had through the trial process and received a judgment of imprisonment whether in LPKA (juvenile correctional facility) and LAPAS (adults' prison). The informants in this study were adolescents who had through the trial process and received a judgment of imprisonment whether in LPKA (Lembaga Pembinaan Khusus Anak) or juvenile correctional facility and LAPAS (Lembaga Pemasyarakatan) or adults' prison. The data come from the results of the LITMAS (Penelitian Kemasyarakatan) or social-correctional research that have been conducted by the Pembimbing Kemasyarakatan (community correctional officer/probation and parole officer) who assisted the informants from the pre-adjudication to post-adjudication stages. Furthermore, an in-depth interview with the Pembimbing Kemasyarakatan has been conducted to clarifying the discussion issues of the research.

3. FINDINGS AND DISCUSSION

Dating sexual behavior is common among the adolescent. A most adolescent has had various type of sexual contact with their dating partner, like hugging; kissing and sexual intercourse. However, few adolescents know that this dating sexual behavior can put them at high legal risks. Having sexual intercourse with an underaged dating partner can make adolescents become child sexual abusers. There are some problems that cause adolescents to become the perpetrators of sexual violence against children. In general, these problems are grouped into two categories of discussion. Which are the problems of the adolescent's development stage of the juvenile offenders and the problems of the law enforcement process.

3.1. The Problems of the Adolescents' Development Stage

3.1.1. Psychosexual Development Problems

Adolescents enter a stage of very rapid development, covers all aspects of human development. The phase of adolescent development is usually synonymous with the development of sexual organs, the identity crisis, and intense peer influence. Each of these stages has a high impact on an adolescent's behavior.

The maturation of sexual organs in adolescence is referred to as puberty. The stage is marked by drastic physical development, for girls the changes involve breast budding and menstruation. For boys puberty onset involve enlargement of the testes and first ejaculation by wet dream. Puberty also marked with the appearance of attraction to the opposite sex, and raise of sexual urges. At this phase, adolescents generally have a great curiosity about sexuality. They started looking for information about sexuality from various sources. The rapid information through current technology often causes adolescents to access information on sexuality from inappropriate sources.

The identity crisis in adolescents puts them in uncomfortable situations. The adolescent begins to question things about themselves and develop their self-esteem. The search for identity in adolescents makes them like to explore new things. With their high curiosity, adolescents can sometimes easily try something extreme to dangerous.

For adolescents, peers have a crucial role in determining their behavior. Peers are seen as a source of support that can increase adolescent self-confidence. Teens can become very dependent on their peers, especially when they get less attention from their parents or family members. Meanwhile, peers provide a reference point for a developing sense of identity and also develop moral judgement and values. Adolescents will follow the behavior of their peers. It is often caused adolescents to get caught up in risky behavior with their peers.

In the context of sexual abuse committed by adolescents in dating behavior, the cases discussed in this study showed that adolescents did sexual intercourse with their dating partner because it was considered normal by their peers. They also claim to be influenced by pornographic content that they can easily access from the internet. Adolescents also feel compelled to do what their peers do because they are afraid of not being accepted by their peers. These

juveniles are claimed that they did not even know if their act was a kind of serious crime. They perceive it was a common behavior by the teens and it is not considered as a crime. The first reaction they felt when they found out that the action they had committed was a form of crime was certainly a shock to them.

3.1.2. The Lack of Parental Supervision and Assistance

Although the frequency of contact between family decrease in adolescence, this does not mean that family presence is less necessary for adolescents. The family continues to have a significant role in guiding adolescents so that they avoid the bad effects of associating with peers. This is why parental supervision and assistance are crucial to help adolescents cope with their problems during the vulnerable phase of the development stage.

The result of this study showed that these juvenile offenders have a minimum closeness with their family. Parents are busy working and only focus on fulfilling material needs. The disclosure between parents and adolescents cause them to lack of supervision so that adolescents do risky behavior. Besides that, these juvenile offenders reported having low-quality communication with their parents. The decisive and controlling attitude of parents makes juveniles feel insecure about having the talk and share the problems they experience. Especially about their dating behavior. This condition makes teens feel uncomfortable at home, so they choose to be more outside the house where they can freely do the things they like. Research found that parental support associate with sexual behavior in adolescents. Although it is not directly predicted risky sexual behavior, it did predict self-esteem and dating identity exploration which mattered for explaining variance in risky sexual behavior.[11]

3.1.3. Limited Access to The Appropriate Sexual Education

Sexual education is still considered taboo by most Indonesian people. Although there have been many public and private institutions that have campaigned for the importance of sexual education for adolescents through various programs, the application in the field is still in-effective. Some parties that provide sexual education to adolescents keep focusing on knowledge about the reproductive

(biological) function and more about normative ethical morals. Meanwhile, adolescents need more about a practical skill that can help them deal with their sexual behavior and urges. This causes inappropriate forms of provided sexual education for the adolescent's needs.

The informants in this study reported that they had never had access to any sexual education either from teachers at school or from parents at home. They claim to independently seek information related to sexuality from the internet without any supervision that they cannot consider the truth of the information they get. They also admit to discussing sexuality topics with friends because they are considered more comfortable and less judgmental statements.

Misinformation about sexuality topics can lead adolescents to the wrong decision. For examples, be engaged in risky sexual behavior. The informants stated that they had sexual intercourse with their dating partner because they did not understand the risks involved. They do not know how to cope with an emerging sexual urge and cannot release it healthily and responsibly. Sexual education is known to have a significant role in determining the sexual behavior of adolescents. The implication of proper sexual education can make adolescents psychologically resilient so they can avoid early sexual behavior. [12]

3.2. The Problems of Law Enforcement Process

3.2.1. Dating Sexual Behavior in The Child Protection Act

It is interesting to know about how the law in Indonesia judges dating sexual intercourse. In the Law of Republic Indonesia No. 35 of 2014 on the Child Protection, sexual violence against children are only classified into two types of crime which are sexual intercourse and non-intercourse (harassment). According to Article 76D of the Law, states that everyone is prohibited from committing violence or threats of violence to force children to have intercourse with him or other people. (Article 76D of [13]). So, if there is an adolescent who is committing sexual intercourse with his underage girlfriend (dating partner). He still faces the risk of being punished as a child sexual abuser.

A person who is under 18 years old is categorized as children in the Indonesian legal system. If adolescents have sexual intercourse in a dating relationship. Based on their minors situation, the

actions they take could be judges as sexual intercourse violence with children as mentioned in Article 76D of Child Protection Law. Generally, having sex with a dating partner is consensual. Adolescents who are still in an unstable development phase commonly engage in risky sexual behavior with their dating partners. But unfortunately, sexual abuse is not classified as a petitioned offense. It means even though the victim did not report the case or she wanted to stop the case, it would not stop the ongoing law enforcement process. The informants of the case generally came from the family members (parents) or the other people who witness the occurrence. Consent from the victim is not required to bring this case into court.

The majority of patriarchal culture in Indonesia places boys in a disadvantaged position. Even though they did consensual relationship, boys are seen as figures who must be more responsible for the actions that have been taken by both parties. Meanwhile, girls are placed in the position of victims as if they were forced to have sexual intercourse with their dating partner. This is due to the existence of inequality of social constructs as a product of authoritative relations from gender bias between boys and girls in society. Furthermore, it is biologically assumed that more logical for boys to commit rape than girls.

3.2.2. Inadequate Capacity of Law Enforcers in Handling Sexual Violence Against Children

In handling cases involving juveniles, sometimes law enforcement officers are less able to carry out well communication approaches for adolescents. No wonder because they have many things to do with limited deadlines. Moreover, they are also not provided with proper training to be able to have warm communication with adolescents.

To carry out their work in limited situations, law enforcers often use suppressive communication to the juvenile offenders. It is also reported the use of violent-content interaction by the law enforcers to the juveniles while they dig the information about the case. Inappropriate communication ways make juveniles feel more uncomfortable about facing the law enforcement process. Even more, sexual violence is considered a disgrace and very embarrassing to discuss. This unpleasant situation was experienced not only by the juvenile offenders but also by the victim.

In the juvenile criminal justice system, the law enforcement process is required to be carried out by prioritizing the best interests of the child. But the fact its application in the field encountered many obstacles. One of the biggest obstacles encountered in implementing an ideal criminal justice system is to change the mindset of law enforcers. The ability of law enforcers to interact with children strongly determines the success of the law enforcement process. But, most law enforcers still maintain the old approach in handling cases involving the child. It can harm the psychological condition of the children (adolescents), both the perpetrator and the victim. The unpleasant moment they experience can last into the future and even develop into specific trauma. This study found that the juvenile offenders admitted about felt stress and discomfort from the law enforcement process they were going through.

3.2.3. Juveniles Justice System for Sexual Intercourse Violence

The juveniles criminal justice system uses a restorative justice approach that emphasizes the recovery process of the stakeholders involved in the case. The supremacy of the juveniles criminal justice system is the settlement of crime through a Diversion. It is a process to divert a formal criminal justice stage to an informal process by discussion involving the stakeholders associated with the case. The primary purpose of implementing Diversion is to formulate the proper solution by considering the best interest of the child. Article 7 of the Juveniles Criminal Justice System Law regulates the requirement of Diversion. One of which mentions in the article is about the case with a maximum sentence of seven years. It means that crime with a maximum penalty of more than seven years cannot be resolved by Diversion.[14]

Sexual intercourse violence to children has a high threat of punishment. As mentioned in Article 81 the Law of Child Protection, a threat for perpetrators is a minimum of 5 years and a maximum of 15 years imprisonment. By means that adolescents who are found guilty of sexual intercourse with their dating partner will be subject to the threat of punishment as the same as applies to child sexual predators. Although these two types of crimes are seen very differently, the limited definition of sexual violence as mentioned in the statute leaves law enforcers with no other options. The juveniles will also be tried in a prolonged formal legal process. The informants in this study reported having been through the judicial process for 3 to 6 months. Some of them were even arrested and

detained while waiting for the trial process. Whereas in the law of the juvenile criminal justice system, detention should not be carried out as long as the child still has supervised from parents, family members, or other caregivers.

The prosecution for perpetrators usually is a long period of imprisonment. The range of the prosecution is two and a half until four years imprisonment. The prosecutor gave such a high prosecution was generally based on the punishment stated in Article 81 of the child protection law. Besides, cases of dating sexual intercourse have generally been carried out several times before being brought to the trial or the victim is already pregnant. The pressure to give hard punishment to the perpetrator (the boy) generally comes from the parents or family members of the victim (the girl). Most of the cases reported were dating relationships that were not sanctioned by their parents. Some reasons are because the boy who becomes their daughter's lover does not have a proper education or works, or comes from a low-income family. The final judgment is generally similar to the prosecution. Adolescents who are tried for having sexual intercourse with their dating partners often receive prison sentences.

The juvenile criminal justice system has stated that imprisonment is ultimum remedium or the last option for the child. It is because prison can give a strong negative effect on adolescents. There are other alternative punishments for adolescents according to the law of juveniles criminal justice system. Section two Article 71 the law of juveniles' criminal justice system regulates the types of trials that can be given to the juveniles such as society services (volunteerism) and vocational training in the institution. However, imprisonment still becomes the most popular decision for juveniles in any categorize of crimes.

Juveniles who receive a prison sentence should be placed in a juvenile correctional facility. It is a special department that provides social community intervention and education to juvenile offenders, they were separated from adult prisoners to reduce the bad consequences of imprisonment. Unfortunately, these juvenile correctional facilities are not available in every district of Indonesia. Some of the informants in this study experienced their prison period in the adult correctional department (LAPAS). According to the report of this research, they can still easy to interact with adult prisoners. Living in prison is certainly hard for adolescents'

live. Limited conditions and space make them have bad life experiences. Harsh punishment is not effective and even be counterproductive for adolescents, especially placement in the adult prison. Some studies provided evidence of the subsequent incidence of violence offense as the effect of the juveniles who were placed in an adult prison. Transfer to the adult prison results in greater subsequent crime, including violent crime, among juveniles. [15]

4. CONCLUSION

Based on the discussion above, it is clarified how a common dating behavior by adolescents can twist to be a serious crime. Risky sexual behavior in dating adolescents has been widely recognized as a social problem. However, few people know that this behavior can become a serious crime. Considering in current situations that sexual behavior in dating is assumed normal behavior by adolescents, it could increase the risk of adolescent involvement in serious law break.

According to the findings in this research, it is highly recommended to develop a comprehensive prevention program to overcome the level of risk for adolescents to be juveniles offenders. To increase the effectiveness of implementation, the prevention programs can be provided at a very early level. Broad stakeholder engagement is urgently needed for the success of program implementation. One form of a prevention program that can be provided is early sexual education that involves schools, parents, and other relevant institutions. Sexual education provided must consist of complete information and in accordance with the adolescent's needs. In addition, the delivery technique must also be adjusted to the characteristics of the youth who are fun. Furthermore, adolescents must also obtain adequate legal understanding in order to avoid breaking the law due to their lack of understanding of the risks for the actions they take. Particularly in the context of sexual behavior.

The handling process for such cases also needs more attention. This is because sexual violations have a great level of psychosocial problems for adolescents. There needs to be a sufficient understanding from the law enforcers who handle such cases not to give wrong responses when dealing with juveniles who are involved in dating sexual intercourse violence. Moreover, the right approach is needed to provide the appropriate intervention, instead of giving severe punishment to adolescents involved in such cases.

Last but not least, both the perpetrator and the victim in the case of dating sexual intercourse violence by adolescents are victims of improper parenting and education to help them face a crisis in their vulnerable developmental stages. Knowing that many adolescents have been sentenced to severe punishment for acts they do not even understand is evidence that the regulation of sexual violence has the urgency to be reviewed. A central statement is to give the proportional punishment for the adolescents which is based not only on the harm caused by the crime but also on the excused of adolescents' immaturity and the degree level of responsibility.

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