



Regulatory Mechanism for Enforcement of Sanctions for Criminal Offenses for Children Under the Age

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Abstract. The childhood phase is a period of growth and development both physically and psychologically. Every child who is at this time is at the level of time to get the desire for something without considering the consequences of that decision. So in this case, the child has the potential to be a legal subject in a criminal case. As a form of violation of norms, crime requires accountability in order to create obedience to the law. The form of delinquency that is often carried out by these children can be in the form of actions that are contrary to immorality such as sexual abuse. Obscenity is a heinous act that violates decency or decency. One of the facts is the case of sexual intercourse committed by the accused child Rangga Desta aged 14 (fourteen) years with Case Register Number 8/Pid.Sus.anak/2022/PnTjk was declared to have been legally and convincingly proven guilty of committing a crime and the accused child Arfan Al Faris is 15 years old with Case Register Number 7/Pid.Sus- Anak/2022/PN Tjk. It is stated that he has been legally and convincingly proven guilty of committing a crime under Article 81 paragraph (2) of the Republic of Indonesia Law No. 17 of 2016 concerning the stipulation of government regulations in lieu of Law no. 01 of 2016 concerning the second amendment to the Republic of Indonesia Law Number 23 of 2002 concerning Child Protection. The difference in the sentencing decision for the obscenity case with the defendant amounting to 2 (two) children and 1 (one) victim becomes a question whether it is in accordance with the legal purpose to create justice. The type of research used in this research is normative juridical research through an inventory obtained from secondary data sources by literature study with qualitative data analysis. This research aims in the long term to identify and solve problems related to the imposition of sanctions on criminal acts of sexual abuse by children who have different legal considerations to create legal certainty.

Keywords: Regulatory Mechanisms · Enforcement of Sanctions · Perpetrators of Obscenity · Children

1 Introduction

The hope of development for every nation is children. Children are part of society whose function is to maintain the sustainability of the nation which is used as a generation to

continue the process of development, renewal, discovery in order to create synergies in the state of development of a country. As the forerunner of the succession of the nation, the state must protect and promote all aspects that serve the growth and development process of the child. The rights of the child, of course, are affirmed in Sect. 28B(2) of the 1945 Constitution, stating that "Every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination". I'm here. Legal top hierarchy arrow. Applicable in Indonesia.

The role of children in society is a fundamental role as the successor of human life. Children are a source of future potential. Therefore, in order to maintain the quality of future generations, the state has guaranteed the rights of children from all forms of intervention that may degrade the quality of the nation's successors. According to Nasir Djamil, children are the successors of future generations. However, because children are a young generation, they are often considered as people who are easy to treat without reflecting on humanity.

The childhood phase is a period of growth and development both physically and psychologically. Every child who is at this time is at the level of time to get the desire for something without considering the consequences of a decision. Children as part of a layer of society that is vulnerable to social deviations must still be treated without eliminating children's rights to discrimination. Deviations that occur are actions that are contrary to the values that live in society. Non-adjusting behavior with the values and norms prevailing in society can be influenced by external factors and internal factors. Thus, environmental, family, and social factors serve as benchmarks for child development.

The time difference means that children may commit acts that violate the law or crimes committed by children. The crimes these children often commit can take the form of immoral acts such as: sexual intercourse is an abominable act that violates courtesy and decency. The offense of sexual intercourse is a crime against morality regulated under Articles 286, 287 and 288 of the Penal Code, Chapter 14, Book 2 (KUHP), and in particular, Article 81(2) of the Law of the Republic of Indonesia. No. 17 of 2016 on Making National Regulation to Replace Law No. 01 of 2016 on Second Amendment to Law No. 17 of the Republic of Indonesia. 23 of 2002 on Child Protection.

Throughout 2021, based on the Case Investigation Information System of the Tanjung Karang District Court, there were 62 (sixty-two) cases involving various types of juvenile crimes. The identification of cases that have legal force with the imposition of decisions regarding child protection are 7 (seven) cases. This shows that there is still rampant delinquency that occurs in children. Then, starting from January 1, 2022 - March 18, 2022, there are 14 (fourteen) cases of special criminal cases that have been decided or are in the process of being examined by the Tanjung Karang District Court. Some of the cases handled include cases of theft, abuse, narcotics, and child protection. One of them is a case regarding child molestation against a child registered with the Case Register Number 8/Pid.Sus.Anak/2022/PnTjk the verdict against the defendant named Rangga Desta aged 14 (fourteen) years in the form of imprisonment for 3 (three) years in The Child Special Guidance Institute (LPKA) and job training for 3 (three) months for obscene acts intentionally persuaded a child to have intercourse with him on the basis of a single charge. The act of sexual intercourse which caused the victim's child, namely Mozza Anggraeni, involved 2 (two) perpetrators in this case the defendant Rangga Desta

and the second perpetrator, namely Arfan Al Faris who was sentenced to 2 years in prison for sexual intercourse.

Of course, the imposition of a crime on a child decided by a judge has been considered based on all aspects aimed at maintaining the dignity of the child. It is reviewed based on the specifics that need to be applied in the juvenile justice process, one of which is the imposition of sanctions that must be imposed without weighting. When examined, the criminal threat regulated in Article 82 of the Child Protection Law regarding the criminal act of obscenity is for a maximum of 15 (fifteen) years. Starting with these provisions by prioritizing the specifics that must be applied by children, the child protection case has been terminated in the form of criminal sanctions that are less different, namely for children in conflict with the law of Rangka Desta for 3 (three) years and children in conflict with the law 2 Arfan Al Faris For 2 (two) years. Then, what are the benchmarks that affect the rights of children in the mechanism for imposing sanctions in the criminal justice process.

Based on the description above, the authors are interested in studying more deeply about the imposition of sanctions for child perpetrators of sexual abuse to provide legal certainty for perpetrators of sexual abuse of more than one person, with the title "Mechanisms for Enforcement of Sanctions for Criminal Acts of Obscenity for Underage Child Perpetrators. Age". Legal issues/issues that will be studied in this research are:

- What is the mechanism for regulating the law to enforce sanctions for criminal acts of obscenity for perpetrators of minors?
- How is the role of law enforcement officers in terms of law enforcement authorities against children by prioritizing special protection?

This research was conducted to solve the problem of imposing sanctions on children as perpetrators of criminal acts of obscenity while still providing legal certainty over the position of children as perpetrators. Specifically, this study aims to identify weaknesses in the mechanism for enforcing sanctions for acts of sexual abuse for perpetrators of minors by law enforcement officers at the Tanjung Karang District Court. Based on the identification above, it is possible to propose a model for solving juvenile criminal cases by emphasizing diversion and restorative justice.

The type of research used in this research is normative juridical research to examine theories, concepts, legal principles and legislation. The normative juridical approach is used to analyze various laws and regulations relating to the current laws and regulations whether they have provided justice and legal protection for children who are perpetrators of sexual abuse.

The urgency (priority) in this research is to provide answers to the effectiveness of legal mechanisms for enforcing legal sanctions for criminal acts of sexual abuse for children as the implementation of special protection for children by analyzing the right model to target the findings of the targeted research. The purpose of doing this research is as a reference material in Criminal Law, especially the Juvenile Criminal Justice System as a form of contribution to this research.

2 Literature Review

2.1 Overview of Children

Children are the hope implied as the shoulders of the nation in the relay of national development. Parents' role is to guide and support their children's growth and development so that they can continue to explore within a purposeful framework. Classification of children in Indonesia is done using age limits to determine if a child is a child in conflict with the law. A legal framework for children is guaranteed in Article 28B(2) of the 1945 Constitution (UD 1945), which enshrines the right of every child to survive, grow and develop, and to be protected from violence and discrimination. I have confirmed that there is The 1945 Constitution does not explicitly define a child. However, the Constitution guarantees that children are entitled to legal protection. This is directly proportional to the Penal Code (KUHP), which does not clearly state the definition of a child. However, according to Article 45 of the Penal Code, a minor is a child who has not reached the age of 16.

The legal protection that Indonesia provides to children was regulated by her Law No. 23 of 2002 as amended by Law No. 23. Her 2014 35 on child protection. It is emphasized that a child is a person who has not yet reached the age of 18, including children still in the womb. In absolute terms, the legal protections provided indicate that all communities must implement provisions to ensure children's rights. Last but not least, the Child Protection Procedures Act as set out in the Juvenile Justice System Act No. 11 of 2012 "UUSPPA". Regulating the mechanisms of judicial proceedings for crimes committed by children in conflict with the law. The UUSPPA defines children as children in conflict with the law (ABH), victims of crime, and witnesses to crime. It is concluded that the age range for ABH is 12 to 18 years old and the age limit for child victims and child witnesses is 18 years. Special protection is accorded to children, regardless of their legal status, without invalidating the legal ideal of justice.

The definition given by legal instruments regarding children is often mentioned by determining the age limit of the child. Various legal provisions create disharmony regarding the age classification of children. The development of the times that gave birth to changes to the new Law was motivated by the purpose of establishing a different law. Therefore, each arrangement has a different interpretation of the implementation of a legal policy. Nevertheless, Indonesia adheres to the legal principle of *lex specialis derogat lege generali* which means that special provisions override general provisions.

2.2 Provisions on Sexual Intercourse Based on the Criminal Code and the Child Protection Act, as Well as the Provision of Sanctions for Children as Actors in the Perspective of the Juvenile Criminal Justice System

Humans are creatures who have a tendency to fulfill satisfaction for themselves. Sexual desire is a form of human desire in achieving its own satisfaction. Children as part of the stages of the process of human growth and development, make it possible to realize sexual desires. The desire to fulfill human desires "can" be categorized as a crime. Criminal liability is a legal effort in tackling crime. Crimes committed by humans are not only committed by adults, but can also be committed by children.

Crimes committed by adults and children are governed by substantive criminal law. Sex offenses are regulated under Article 81(2) of the Republic of Indonesia Law No. 2. 17/17/2016 on Establishment of State Regulation to replace Law No. 01 of 2016 on Second Amendment to Law No. 17 of the Republic of Indonesia. 23 of 2002 on Child Protection. The penalty provisions in Sect. 1 also apply to anyone who knowingly plays a prank, tells a string of lies, or persuades a child to have sex with him or someone else. It also carries criminal penalties of at least 3 years and up to 15 years, with tipping fines of 60,000,000 rupiah (600 million rupiah) and up to 300 million rupiah (300 million rupiah).

It can be qualified that the listed elements are: First, each person. Referring to the element / each person, the perpetrator in this action is a human being who can consciously carry out criminal responsibility. Second: intentionally persuade to do or allow obscene acts. This means that there is an element of intentionality in committing obscene acts to him. Obscenity is an act of depriving someone of honor. Obscenity is a vile, despicable act and violates norms. So in the case of sexual abuse it cannot be tolerated. The dignity of each individual is a personal authority that intersects with the human rights of each individual. Obscene acts are allowed to occur by using violence or threats of violence. Criminal liability is a legal effort in tackling crime. Crimes committed by humans are not only committed by adults, but children can also do. Criminal liability is related to the elimination, reduction, or things that can incriminate the criminal. Criminal liability for legal subjects who are underage in Article 45 of the Criminal Code is before 16 years. In accordance with the concept of special protection for children, the criminal imposition model must be carried out without weighting.

When implementing criminal sanctions against children, the rights of children must be protected. The Indonesian Child Protection Board (KPAI) can take strict action against violations of the implementation of children's rights under Article 76D of Law No. 35 of 2014. This is punishable by up to 5 years imprisonment and up to 15 years imprisonment. He fined 5,000,000,000 rupiah (5 billion rupiah) at most per year. Sanctions against children in conflict with the law must begin through the judicial process, beginning with investigations, investigations, prosecutions and court hearings, and ending with judges' decisions. Under juvenile law, detention may be carried out provided that the child is at least 14 years of age and faces a sentence of not less than seven years in prison, pursuant to the provisions of the UUSPPA. Although the UUSPPA regulates judicial proceedings for children, the juvenile court system essentially emphasizes legal resolution based on a familial approach in the form of diversion to case resolution with a diversion to restorative justice approach. There is The transfer of settlement of cases outside the court as a specialty in the UUSPPA is intended to minimize the imposition of punishment for children through diversion. Contrary to this, Article 7 paragraph (2) of the UUSPPA stipulates that diversion can only be carried out if the prison sentence is less than 7 (seven) years and is not a repetition of a crime. Diversion is carried out by involving children who are in conflict with the law, their parents and/or guardians, community counselors, and professional social workers through deliberation to achieve peace through diversion agreements. If a diversion agreement is not reached as a judge, then the trial process will continue until the sentencing stage.

The mechanism for imposing child punishment as a final measure consists of the main punishments which can be in the form of:

- warning penalty,
- criminal conditional,
- job training penalties,
- coaching in institutions,
- prison.

And additional penalties consisting of:

- deprivation of profits derived from criminal acts and,
- fulfilment of customary obligations.

If the criminal provisions are cumulatively threatened in the form of imprisonment and fines, the fines are replaced with job training. The principal sentence of imprisonment ranks last which can be interpreted that imprisonment is used as the last resort in a juvenile criminal justice process. The warning penalty which is used as a sanction for the crime of a child is imposed on the type of minor crime. In contrast to the conditional punishment, this punishment is imposed if the criminal act is threatened with a maximum of 2 (two) years in prison for the provision of special conditions, whether carried out outside the institution, community service or supervision. In addition, job training penalties are imposed on children based on the child's age. The imposition of sanctions must be considered without limiting the freedom of the child, unless the child commits a serious crime or a crime accompanied by violence.

The position of a child in conflict with the law, whether as a child, child victim, or child witness, gets objective treatment before the law. The examination carried out by the judge in court is aimed at revealing the facts by considering the child's personal situation, the lightness of the act as part of the aspect of justice and humanity. It can be concluded that the law moves dynamically to review all conditions related to its enforcement efforts. This study is aimed at solving problems related to how the mechanism for enforcing sanctions for criminal acts of obscenity for perpetrators of minors due to disharmony regarding the classification of the age limit of children in relation to immoral crimes of obscenity.

3 Result and Discussion

3.1 Legal Arrangements for the Crime of Obscenity for Minors

Child protection is regulated by Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection. The latter was amended into law by Law No. 17 Year 2016 making Government Regulation in place of Law No. 1 Year 2016 on his second amendment to Law No. 23 Year 2002 on Child Protection. Child protection means all activities to ensure, protect and protect children and their rights from violence and discrimination so that they can live, grow, develop and participate optimally in accordance with human dignity. am.

One way to protect children is to protect them from physical and psychological violence, sexual crimes and neglect.

Sanctions against perpetrators of sexual intercourse with minors are case number 8/Pid.Sus.Anak/2022/PnTjk on behalf of children of Rangga Desta and case number 7/Pid.Sus-Anak/ on behalf of children of Arfan Based on 2022/PN Tjk. There are children of the same victims as Al Faris. 2002 on Child Protection Act. Law No. 11 of 2012 on Juvenile Court System. So given that the child sex offender is only 14 and she is 15 or still falls under the category of a child, what would the legal process look like? Definition of a child in Law No. 35 of 2014 amending Law No. 23 of 2002. Child means anyone under the age of 18, including children still in the womb.

Children breaking the law or as perpetrators of criminal acts. In this case, the child becomes the perpetrator of sexual intercourse and has rights in the judicial process, including freedom from torture, punishment or other cruel, inhuman or degrading treatment. You also have dignity and the right not to disclose. If both the perpetrator and victim of sexual intercourse are children, the identity of the child, the child of the victim, must be kept confidential in the news, whether printed or electronic. in accordance with Article 19(1) of Law No. 11 of 2012 on Children's rights in court proceedings are governed by Article 3 of Law No. 11 of 2012 on the Juvenile Justice System.

The bottom line is that if the perpetrator of a sexual offense and the victim of sexual intercourse are still children, the court proceedings will use the provisions of Law No. 11 of 2012 on the Juvenile Criminal Justice System. Meanwhile, sanctions against perpetrators of physical and psychological violence against children, sexual crimes and neglect are set out in Law No. 35/2014 amending Law No. 23/2002 on Child Protection. The latter was amended into law by Law No. 17 Year 2016 making Government Regulation in place of Law No. 1 Year 2016 on his second amendment to Law No. 23 Year 2002 on Child Protection.

3.2 Law Enforcement Authority Against Children by Prioritizing Special Protection

The Juvenile Justice Act provides an alternative by which the penalty of deprivation of liberty can be replaced with other crimes more appropriate to the mental state and age of the child. One of these options is vocational training within the meaning of Sect. 71(1) in connection with Sect. 78 of the Child Penal Code. Vocational training offenses are aimed at teaching children appropriate discipline, work ethics, and vocational training techniques for their psychological state. Article 78(2) JStG stipulates that the vocational training lasts at least three months and at most her one year. Time commitment can be used as a measure of the success of goals to be achieved. Anak Rangga Desta decided on the facts of the trial No. 8/Pid.Sus Anak/2022/PN Tjk for the sexual intercourse crime committed, the prosecutor's accusation that the child's behavior violated Sect. 81(2) showed that it matched the "The criminal provisions of Sect. 81 paragraph 1 also apply to anyone who knowingly plays a prank, tells a series of lies, or persuades a child to have sex with him or another." Raden Ayu Rizkiyati Judge, H.H., sentences the child as follows:

1. Anak Langa Desta, as stated in a single indictment at the Masgar Child Development Institute (LKPA) he was sentenced to three years' imprisonment "willingly cause

sexual relations with a child.” Declare final and persuasive conviction on the charge of “persuading to have) Vocational training for 3 months in Pesawalan province.

The second verdict is Decision Number 7/Pid.Sus.Anak/2022/PN Tjk on behalf of the Defendant Anak Arfan Al Faris which was decided by the Sole Judge Safruddin, S.H., M.H. as follows:

- Declaring that Arfan Al Faris’s child has been legally and convincingly proven guilty of committing a criminal act “Intentionally persuading a child to have intercourse with him” as stated in the single indictment
- Imposing a criminal sentence against a child, therefore, with imprisonment for 2 (two) years at the Masgar Special Child Development Institute (LKPA) and job training for 3 (three) months.

The crimes committed by the two child suspects were committed against the same victim but at different times. The length of detention between Anak Ranga Desta and Arfan Al Faris was decided by different judges. It is different because In the facts of the trial, the defendant’s child, Alfani Alfaris, was also pardoned by the victim’s child. The provisions of Law No. 35 of 2014, which amends Law No. 23 of 2002 on Child Protection, does not specify whether the perpetrator of sexual intercourse with a child is a child or an adult. Under the Child Protection Law, the threat of a crime, whoever is the perpetrator of the crime of sexual intercourse against a child, is governed by the provisions of Article 81 of Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection. I’m here. Therefore, the penalty for sexual intercourse committed by a child against a child is a minimum of 5 years and a maximum of 15 years. From this we can conclude that the punishable threat of sexual intercourse by a child against a child is a crime, the threat of which is more than 7 years. Reorient efforts at the level of district courts to investigate, prosecute, and rehabilitate crimes of sexual intercourse committed by children against children under the provisions of Article 7 of Law No. 11 of 2012 on the Juvenile Criminal Justice System I can not do it.

4 Conclusions and Recommendations

4.1 Conclusions

It can be said that the application of sanctions for perpetrators of minors must be in accordance with what has been regulated in the Juvenile Justice System Act considering that children are the younger generation who will grow and develop in order to advance the ideals of the nation, by being given job training will help the development of thinking and development. Maturation of children in conflict with the law.

4.2 Recommendations

Suggestions for parents of children who are vulnerable to being carried away in negative currents in their daily interactions so that they can always pay attention and provide an understanding of behavior that always obeys the rules that apply in Indonesia, does not

violate the norms and rules that have been enforced for the sake of creating a society that obeys the rules of Indonesian law and maintains good relations between Indonesian citizens.

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