

Criminal Sanctions and Legal Protection of Victims against the Crime of Fornication of Minors

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Abstract: *The occurrence of obscene crimes at the age of children is very concerning, so it is urgent to apply legal sanctions and special protection in this regard. The objective of this study highlights the application of legal sanctions in cases of immoral acts by children according to the Ruling on Case Number 2/Pid.Sus.Anak/2018/PN.PMS. Empirical sociological research, by collecting primary data and then analyzing it using applicable legal principles. The results of this study are the application of legal sanctions against children with a penalty of 1 (one) year in prison and 3 (three) months in prison. Job training in accordance with applicable laws and regulations. Because the subject is 15 years old, based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, legal protection has been provided for immature victims such as legal assistance, psychological assistance, and guarantees so that children continue to get their rights, including not being neglected covered by the media, in collaboration with the Indonesian Child Protection Commission (KPAI).*

Keywords: *Legal Sanctions; Protection of Minors.*

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Introduction

Criminal sanctions against subject who committed a crime should be implemented by respecting the principles of justice without distinction of view. This is because there is a deep enough impact resulting from a criminal act. Some events are enough to give a quite impact on the victim is a felony obscenity. Sacrificed not only physical, but also psychological and victim's future were destroyed due to the depraved actions of subject of this fornication. Among the minor psychological impact (Guesehat.com, 2020) is a child become a person who is covered and not confident, arises feelings of guilt, stress, even depression, fear or particular phobia, suffer from post-traumatic disorder events, sometimes unable to enjoying food and hard to sleep, having a bad dream, not socialize with the outside environment, easy to feel uncomfortable and anxiety disorder, presence of psychological disorders, and can inhibit the growth and development of the children.

There are many forms of the crime of obscenity. Even this criminal act does not escape the minors. Some of the events, there were conditions of adult perpetrators and victims who were minors, even the subject and victims were both minors. This has really become a threat for the younger generation (Widyastuti, 2014).

According to Law Number 35 of 2014 concerning Child Protection states that, "The child is a person under 18 (eighteen) years, including children who are still in the womb." (Law Number 35 of 2014 concerning Protection of Children, 2014) while children according to the results of the United Nations Convention on the Rights of the Child "the child is a person who is born of a relationship between a man and a woman. The relationship between men and women when engaged in a marital bond is typically referred to as husband and wife"(Huraerah, 2006).

Need our attention and special protection against child's life to avoid the crimes that would threaten the safety of themselves. There needs to be a role from the close environment such as family to ensure the safety and comfort of children. However, minor as subject still have the right to protection and guarantee of the rights of children in a trial for the act. Therefore, in the case of command a sentence on a minor who is a criminal offender, the judge should pay close attention to the guarantee of the minor's future to do the verdict he will be served.

As this study highlight the implementation of legal sanctions on minors. As a case study that will be raised regarding the Judge of the Pematang Siantar City Court District with Verdict Number 2/Pid.Sus.Anak/2018/PN.PMS, related to the Criminal Action of Fornication by the subject HNS (Minors) with ordinary examination criminal case in the first level. The chronology that happened was that HNS on the day of May 2017 committed violence or threats of violence, forcing the victim, Ezra Immanuella Tambunan, who was 15 (fifteen years old) to have intercourse with him in the kitchen of Hansen's house on Sisingamangaraja Street Number 69, Kahean sub-district, North Siantar City District, Pematang Siantar. HNS held the Ezra's breasts and then inserted his genitals into Ezra's genitals, and Ezra Immanuella Tambunan was in pain so she tried to struggle. Feeling unacceptable, Ezra reported a complaint to the police regarding Hansen's fornication. After going through the trial, through Verdict Number 2/Pid.Sus.Anak/2018/PN.PMS, the public prosecutor pledge that HNS guilty and receiving the sentence of the Criminal Incarcerated 5 (five) years and training in Special Child Development Institute for 3 (three) months (Verdict Number 2/Pid.Sus.Anak/2018/PN.PMS).

In this case, researchers will identify the application of legal sanctions in view of the aspects of the Article 289 Criminal Code About felony obscenity and some instruments

to protect minors, such as Law Number 23 of 2002 concerning Protection of Children and the Law Number 11 of 2012 concerning the Criminal Justice System Child.

Based on the verdict given to the perpetrator, as well as how legal protection was given to victims who were still under the general public, the researchers were interested in carrying out this research. So, from several things that have been stated above, the title of the research was determined, "The Application of Criminal Sanctions and Legal Protection of Victims against the Crime of Fornication in Minors (Case Study of Fornication by HNS a.k.a. ARI regarding Verdict Number 2/Pid.Sus.Anak/2018/PN.PMS)".

The formulation of this problem are: First, how the application of criminal sanctions for minors in cases of abuse (Case Study regarding Verdict Number 2/Pid.Sus.Anak/2018/PN.PMS). Second, how is the treatment of legal protection for underage victims in cases of obscenity (Case Study regarding Verdict Number 2/Pid.Sus.Anak/2018/PN.PMS).

Discussion

This research is a sociological empiric research. In this research was conducted by analyzing descriptively regarding the application of legal sanctions to subject of criminal acts of fornication by minors.

Sources of data consist of: First, primary data, namely data obtained through interviews with legal sanctions implementers in the Pematang Siantar area. Second, Secondary Data is data from various library materials, in the form of books, articles, journals and other documents related to the research material. The informants of this study are all those related to the application of legal sanctions against criminal acts of fornication by minors in the Pematang Siantar Regency. Among these informants there were the subject, family, and the Pematang Siantar District Court.

Criminal Actions

Criminal action is a term and expression used by several legal experts in Indonesia with the term "strafbaar feit". Some terms that are also often used include criminal offenses, criminal events, punishable acts, criminal offenses, and offenses. The term "strafbaar feit" itself which is the Dutch language consists of three words, namely straf which means punishment (criminal), baar which means can (may), and feit which means action, incident, violation and deed. Thus the term strafbaarfeit is an event that can be imprisoned or acts that can be convicted. (Elias, 2012)

Acts of Fornication

The basis used in determining the Crime of Fornication consists of the following legal instruments:

Article 289 of the Criminal Code

Felony obscenity regulated by Article 289 of the Criminal Code ("KUHP") as follows: "Whoever by force or threat of violence to force a person to do or let do obscene acts shall be punishable for committing that attack the honor of decency with a maximum imprisonment of nine years." (Adami, 2002:78)

As to the elements in a felony obscenity under Article 289 of the Criminal Code is an element of force as an act so that it is powerless to avoid it. Violence means any rather violent act. Article 89 of the Criminal Code expands the definition of violence so that it knocked or weakens a person, equates to committing violence.

Article 294 of the Criminal Code

This article describes Child Abuse and Abuse in the Work Environment. Regarding Article 294 of the Criminal Code it reads as follows:

"Anyone who commits obscene acts with his child, stepchildren, adopted children, children under his supervision who are not yet adults, stepchildren or adopted children, foster children, or with an immature person entrusted to him to be borne, educated or guarded, or by a single person or underage who is not yet mature, will be sentenced to a maximum prison term of seven years."¹

Child protection

In the implementation of legal sanctions on minor, it is known as Restorative Justice. Restorative Justice is the completion of the criminal case involving the subject, the victim, the subject's/victim's family, and other relevant parties to work together to find a fair settlement with the emphasis on restoring back to the original condition, and not commit retaliation.

The essence of restorative justice is healing, moral learning, community participation and attention, a sense of forgiveness, responsibility and making changes, all of which are guidelines for the restoration process in a restorative justice perspective.

Law No. 23 of 2002 concerning Child Protection

As for this law, it is stated that there is legal protection related to children who are perpetrators and victims of criminal acts. This can be found in Article 58 which reads:

¹ Article 294 of the Criminal Code

"The government and other state institutions have the obligation and responsibility to provide special protection to children in emergency situations, children who are faced with the law, children from minority groups and isolated, children who are economically and/or sexually exploited, children who are trafficked, children who are victims, drug abuse, alcohol, psychotropic and other addictive substances (drugs), child abduction, sale and trafficking, children victims of violence either physical and/or mental, of children with disabilities, and child victims of abuse and neglect".

Law Number 11 of 2012 concerning Juvenile Justice

Further regulations related to legal protection for children can be found in Article 21 paragraph (1) of Law 11/2012 as follows:

"In the event that the child has not yet reached the age of 12 (twelve) years of committing or is suspected of committing a criminal act, the investigator, social counselor and professional social worker make a decision to: hand it back to the parent/guardian; or participate in educational, coaching, and mentoring programs in government agencies or Institute for Criminal Justice Reform ("LPKS") in agencies dealing with social welfare, both at the central and regional levels, for a maximum of 6 (six) months".²

Research Results

Respondents of this study came from parties related to the same composition of respondents, namely 2 people. Details of respondent data can be seen in the following table:

Table 1
Respondent data analysis

Keterangan	Jumlah	Persentase
Pihak pengadilan	2 persons	50%
Pihak Korban	1 person	25%
Pihak Pelaku	1 person	25%
Total	4 persons	100%

Source: Research Report 2021

² Law Number 11 of 2012 concerning Juvenile Justice

From the respondent's data above, it can be seen that the composition and retrieval of respondents are in accordance with the standard research rules relating to justice. So that the information obtained can be balanced with the actual conditions. For the safety of respondents, personal information is kept confidential and will be distributed to only certain parties.

Data and Facts of Decisions

The perpetrator is a high school student who is still 15 years old. This is in accordance with Law Number 11 of 2012 concerning the Child Criminal Justice System ("UU SPPA") Article 1 point (2) states: *"Children who are in conflict with the law, hereinafter referred to as children, are children who have reached the age of 12 (twelve) years, but not yet 18 (eighteen) years of age who are suspected of committing a criminal act"* (Implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, 2012).

From the information and legal rules above, it can be concluded that the subject is a minors in conflict with the law (Rospita:2022).³ From information derived from the verdict can be seen that the victims and subject are peers without dating relationships who happen to live in the same neighborhood. This obscene incident occurred in May 2017 in the kitchen of the house offenders. Apart from that, the acts of fornication that were charged were holding the victim's breasts and inserting the subject's genitals into the victim's intimate organs. As evidence the subject used was the result of VeR number 7880/ VI/ UPM/ VER/ IX/ 2017 which was made and signed by doctor Bahtera Surbakti, Sp. OG, a doctor at Dr. Djasamen Saragih Hospital with the results of deep examination: a) the hymen was found to be torn long at the position 1,3,6 o'clock, and 9 did not reach the bottom; b) Greeting hole: can be passed by 2 adult fingers; c) conclusion: the hymen is not intact anymore because it has been passed by a blunt object.

Based on the trial process, the Verdict Number 2/Pid.Sus.Anak/2018/PN.PMS is as follows:

- 1) Declare that the son of HNS is not legally and convincingly proven guilty of committing a criminal act as stated in the primair indictment from the public prosecutor;
- 2) Releasing the minor therefore from the primair indictment;
- 3) Declare that the minor of HNS has been legally and convincingly proven guilty of committing the crime of "Forcing a child to allow obscene acts" as in the indictment of the Public Prosecutor's Subsidair;

³ Rospita A.Siregar,dkk,(2022), Tindakan pidana dalam KUHP, Penerbit Widina, Bandung

- 4) Sentenced a child to imprisonment for 1 (one) year and Job Training at LPKA (Institution for Special Development for Children) for 3 (three) months provided that Job Training is only carried out for 4 (four) hours every day, not carried out on evening and not done on Saturday and Sunday;
- 5) Burdening the child to pay court fees of Rp. 5,000, - (five thousand rupiah);

From the verdict above clearly states that the judge's decision rejected the prosecutor's demands and the perpetrator's note of defense by considering it, so he made the decision to sentence the perpetrator to 1 year in prison with 3 months of work training.

Analysis of the Application of Criminal Sanctions the Application of Criminal Sanctions to Minors in the Criminal Action of Fornication (Case Study regarding Verdict Number 2/Pid.Sus.Anak/2018/PN.PMS)

After collecting related data sourced sanctioning of Verdict Number 2/ Pid.Sus.Anak/ 2018/ PN PMS, we then carried out the analysis of the application of the legal sanctions. The analysis carried out is the result of a comparison of the results of decisions, interview statements to Pematang Siantar District Court, and the responses of victims and perpetrators. The collection of data from various parties is based in order to obtain accurate data so that the data is generated objectively on the issues discussed. Related to this, according to the statements of informants stated that:

The first legal process that occurred was a criminal report by the victim and her grandfather to the North Siantar Police, bringing a witness from one of her friends. Based on this, an investigation was carried out and the perpetrator was asked for information from the police.

Based on the results of post mortem certificate stating their acts of abuse then be made to the Minutes of Investigation, for further questioning and actors prepare for the trial. The evidence that is used as the basis for conducting the trial are:

1. Statement of the victim's witness
2. Statement of witness (friend of the victim)
3. Visum letter

Then a trial was held which proceeded according to the rule of law. After following the considerations and the results of the disclosure of the witnesses and the legal basis for the crime of sexual abuse and legal protection of children, it was decided that the punishment for the perpetrator was 1 year from the prosecutor's demands of 5 years and the defense of the attorney who declared his freedom.

From the above statement, it can be seen that the legal procedure that runs started with the victim's report of sexual immorality to the Police. Starting from this report, legal procedures can be carried out. Conversely, if there is no report regarding this act of sexual immorality, then the legal procedure will not work and the criminal act will not be sanctioned and has the potential to be repeated at a later date.

It is important for the community that the reporting act plays a very important role in initiating further legal proceedings. So that the criminal act will get its justice. Moreover, in stating the legal process of a crime it takes at least two items of evidence that the police can carry out arrests of criminals.

So based on the verdict, interviews and respondents carried out an analysis of the application of legal procedures carried out. In accordance with Law no. 8 of 1981 concerning Criminal Procedure Law (KUHP) Article 1 which reads: Investigation is a series of actions by an investigator in matters and according to ways regulated in this law to seek and collect evidence which with this evidence sheds light on the criminal act that has occurred and in order to find the suspect.

Added to Article 1 number 14 which reads:

The suspect is a man who because of his actions or the circumstances, based on preliminary evidence reasonably suspected as criminals.

From the legal rules above, it can be seen that the police action to arrest the perpetrators with preliminary evidence is in accordance with the applicable regulations. This is because when carrying out the report, will be addressed with the investigation if in fact it is reported have evidence starters. In this case, the victim, accompanied by his family, stated a report to the police to further investigate the perpetrator as an alleged act of obscenity. In addition, it is explained again in Article 17: An arrest warrant is made against a person who is strongly suspected of having committed a criminal act based on sufficient preliminary evidence.

Furthermore, Article 21 paragraph (1) affirms which reads:

Detention or continued detention orders made against a suspect or defendant who allegedly committed the crime based on sufficient evidence, in terms of the circumstances which raised concerns that the suspect or the accused will escape, damage or destroy evidence or repeat a crime.

In this case, after receiving a report from the victim, the police continue with the investigation, the offender is asked to be present in the police to explain the principal case. Based on the explanation of the perpetrators and victims in the investigation report, it will be the decision was made to arrest the perpetrators.

Based on the analytical results obtained, it can be concluded that the implementation of legal procedures in accordance with the applicable rules. In accordance with the statement from the district court which states that: As for the legal process that occurred, the basis for the court was anything that was reported by the victim in the criminal report in the police, stating that the victim stated that he had not been molested by the perpetrator.

The basis for consideration is in accordance with what is contained in the decision, namely:

1. Rules related to criminal acts
2. Rules related to the crime of sexual immorality
3. Rules for the protection of minors

Based on that court to follow the path of litigation make decisions perpetrator even though conditions remain minors convicted and receiving sentences dried policies requested by the General Prosecutor of the cage 5 Years to just 1 year. Although in principle the law states that child offenders should not be detained, all of them must follow the trial process.

The result of a decision cannot be based on normative only, so that detention is not carried out. However, the verdict must also give consideration to the victims, especially minors. So the court must not only make the basis of legal protection for minors only to the perpetrators. However, it must also pay attention to the victims.

From the explanation above, it can be seen that the basis for the judgments made by the court in deciding the punishment for the perpetrator is:

- 1) Rules of Crime
- 2) The Non-Criminal Code of Fornication
- 3) Protection of minors.

Application of Legal Protection for Victims of Minors

The victim's personal data are as follows:

Name: EIT

Born: January 15, 2005

Other information:

- a. The victim lives with Boru Manurung's biological oppung;
- b. The victim's father has died and the victim's mother remarried
- c. Child victim No.1 and younger victim 3 (three) people;
- d. The victim does not know how to read and does not recognize letters
- e. The victim has a weakness in remembering school lessons

From the information above, it can be seen that the victim is a minor with the details of about 15 years of age. In addition, it is known that the condition of the victim's family is also imperfect, just like children in general who have complete parents. Due to the conditions of imperfect families affect children's intelligence so that at the age of 15 years just turned Elementary School fifth grade and couldn't read or write.

From the information above it can be seen that the victims are in need of legal protection in itself due to age and psychological condition. This protection needs to be done so that children cannot continue to carry out their daily activities as usual in their condition after becoming victims of sexual abuse.

Regarding legal protection for victims, legal protection must be implemented for victims. To find out the actual conditions in the implementation of legal protection for minors who are victims of sexual immorality, it is necessary to collect data from the court, the victim and the perpetrator.

The data collected shows the following results:

Aspek	Ya	Tidak	Netral
1. Apakah pelaksanaan pengadilan telah menerapkan Hukum perlindungan Anak?	4		
2. Menurut Anda, Apakah Putusan Hakim terhadap HNS sudah sesuai dengan pertimbangan Hukum Perlindungan Anak kepada korban?	2	1	1
3. Menurut Anda, apakah anak dibawah umur harus dipenjara?	1	1	2
4. Menurut Anda, apakah anak dibawah umur cukup mendapatkan pelatihan dan membayar denda saja atas tindak pidana yang dilakukan?			4
5. Menurut Anda korban yang merupakan anak dibawah umur membutuhkan perlakuan khusus dalam pelaksanaan persidangan?	4		
6. Menurut Anda, Pentingkah melakukan pendampingan pada korban yang merupakan anak dibawah umur?	4		
7. Apakah perlindungan hukum kepada korban Ezra telah dilaksanakan dengan semestinya?	2	2	
Jumlah skor	17	4	7
Peresentase	60%	15%	25%

The data above shows that in general the respondents gave a response that the legal protection of victims had been implemented properly. In the application of the Legal Protection held on minor victims of acts of sexual abuse Offenses, then collected information from Parties to the Court with the following details: Legal protection that must be done is:

- Carry out the legal process as fairly as possible. This is proven even though the perpetrator is a minor, still receiving a sentence of 1 (one) year imprisonment which is considered fair enough because the victim is a child.
- Providing legal assistance to children
- Providing psychological assistance to children while carrying out trials so that they are not afraid and can provide real information
- Ensuring that the child still gets his / her rights as a child in the community, such as getting education, socializing, and so on.

- e. Is given the right to remain silent or not to be covered by the media.
- f. Coordinate with the Indonesian Child Protection Commission (KPAI) in regards to psychological and social recovery for victims.

From the information above, it can be seen that the application of legal protection has been implemented. So based on a statement from the Court, the legal protection that is implemented consists of direct protection and indirect protection.

Immediate Protection

Direct protection is protection provided to minors as victims of the criminal act of fornication which is carried out directly, so that it is obvious that the act is an act that implements legal protection.

Based on a statement from the court regarding the legal protection that has been carried out in the trial process of the molestation case by HNS and Victim Ezra are as follows:

- a. Providing legal assistance to children
- b. Providing psychological assistance to children while carrying out trials so they are not afraid and can provide real information
- c. Ensuring that the child still gets his / her rights as a child in the community, such as getting education, socializing, and so on.
- d. Conduct of the trial conducted exclusively.

As for the actions taken at the court:

- a. Does not allow the media to cover victims
- b. Using the term Child in Conflict with the Law (ABH) to refer to a child who is a suspect, defendant or convict, while the term prostituted child refers to a child employed as a sex worker.
- c. Children can be accompanied by their parents when providing information
- d. using words, photos, videos that point to vulgarity is not allowed to protect the victim's psychological state

Indirect Protection: Direct

As for the indirect legal protection is meant is the verdict of the case itself. A fair decision and in accordance with the applicable rules will indirectly provide legal protection for the victim of a minor. This is because the objectives of sanctions which have implications for a deterrent effect can be properly realized. If the verdict does not provide justice for

the victim, it will increase the potential for unsafe conditions for the victim. So the position of decisions in legal protection is the main thing even though they are not implemented directly.

According to researchers, the application of legal protection has been implemented according to standards, but considering the condition of the victim who is a minor with a condition of less proficiency compared to children in general, there must be intensive assistance in terms of disclosing the truth. The condition of the low catching power of the victim, there could be facts that were not revealed because the victim did not convey it.

In addition, legal protection should not end after the verdict was issued. More than that, protection must also continue in paying attention to the victim's psychology. KPAI then works with families must ensure the rights of children and parents get the role of the birth mother. This step is considered important because the victim's psychological condition is very vulnerable.

Conclusion

Implementation of Legal Sanctions for Offenders of Minors through Verdict Number 2/ Pid.Sus.Anak/ 2018/ PN PMS to a child named HNS regarding the provision of a sentence of 1 year in prison and 3 months of job training in accordance with applicable legal regulations . This is evidenced by the Judges' Basic Consideration in relation to Article 294 of the Criminal Code which states that the sentence for the crime of fornication is 7 (seven) years. Because the perpetrator is a child aged 15 (fifteen) years, based on the Law on Child Protection and Juvenile Justice Number 11 of 2012 and consideration of the good behavior shown by the child during the trial, sanctions are given in accordance with the results of the verdict.

Legal protection for minors of Ezra's victim of sexual immorality consists of direct and indirect protection. Direct protection is implemented such as providing legal assistance to children. Providing psychological assistance to children while carrying out trials so they are not afraid and can provide true information. Ensuring that the child still gets his / her rights as a child in the community, such as getting education, socializing, and so on. Is granted the right to remain silent or not covered by the media. Coordinate with the Indonesian Child Protection Commission (KPAI) in regards to psychological and social recovery of victims. Meanwhile, indirect protection is to give decisions fairly as possible so that victims will avoid frustration and disappointment.

Acknowledgments

In order to carry out the trial process in accordance with the standards of conducting trials with children in conflict with the law. Among other things, paying attention to language, and ensuring that both victims and perpetrators who are minors receive psychological assistance from their families or certain parties to ensure their psychological safety. The judge to give wise decision in the case of minors to be able to pay attention to the condition of children and their future

In order to pay special attention to victims who seem to have a little memory weakness due to the condition of their parents and family that is not harmonious. In collaboration with the Indonesian Child Protection Commission (KPAI) Pematang Siantar Regency to be able to treat trauma victims.

In order not to take action to isolate or to reopen the case for psychic cornering victims or perpetrators in the future. Provide positive interactions with victims and perpetrators who are minors so that they can be sure that they are accepted by their environment

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