

JURIDICAL ANALYSIS OF IMPLEMENTATION OF INVESTIGATIONS ON THE CRIMINAL ACTION OF ABUSE AND OR ABILITY OF CHILDREN

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Abstract

The crime of obscenity is part of the crime against dementia. This obscenity does not only happen to adults but also to minors. In this research, the type of research used is normative legal research/normative juridical research. The results of the study show that the process of investigating criminal acts of sexual abuse and/or intercourse with children is carried out in several stages, namely making reports, conducting investigations, conducting *visum et repertum* (VeR), conducting cases, sending notices of commencement of investigations, examining witnesses, conducting case titles determining suspects, arresting suspects, conducting examinations of suspects, collecting evidence and conducting filings. The inhibiting factors in the investigation of criminal acts of sexual abuse and/or intercourse with children are obtained from internal and external factors, internal factors include the knowledge of investigators, difficulty obtaining *visum et repertum*, difficulty in presenting witnesses and suspects running away. While external factors include facilities or facilities that support law enforcement and community environmental factors.

Keywords:Investigation, Obscenity, Children

INTRODUCTION

In various social phenomena that occur in society, cases of crime or criminality are conditions that need special attention. Looking at the developments in society, day by day there is an increase in the aspects of criminal acts which legally and formally violate the provisions contained in the Criminal Code (KUHP) as well as other regulations outside the Criminal Code.¹

For the sake of creating an orderly, peaceful, peaceful and secure life in social life, the State has created provisions in the form of norms or rules that determine how one should behave in society, thus violating these norms or rules. These rules will be subject to sanctions or punishments either in the form of suffering or sorrow.²

Legal recognition is an important effort in creating peace in society. To obtain this, efforts are needed both preventive and repressive, namely an act of social control carried out before and after the occurrence of crimes and violations of the law. The problem of crime deserves special attention from various groups, including the general public.³

Crime that occurs in Indonesian society, one of which can be due to uneven economic and social development, as well as low awareness of the law which is a trigger factor for crime. In addition, basically there are many factors that can underlie the occurrence of a crime, but the main factor is the opportunity and passion that drives someone to commit a crime. Recently there have been many crime cases where the victims were not only adults but had reached teenagers, children and even toddlers. One of the crimes that is being hotly discussed in our society today is crimes against decency such as rape and molestation of minors.⁴

The crime of obscenity is part of the crime against decency. This obscene act does not only occur to adults but also occurs to minors so that either directly or indirectly, children who are victims of obscene crimes experience various disturbances to themselves, both physical and non-physical, arising from the incident. According to Odhayani, the perpetrators of child molestation are generally people they know or those closest to them. Therefore the most basic thing that can be done by the criminal justice system regarding child abuse is to increase its detection and disclosure so that it is likely that the perpetrators will be caught and prosecuted.⁵

The crime of sexual abuse is regulated in Law Number 1 of 1946 concerning the Criminal Code (hereinafter referred to as the Criminal Code) in chapter XIV book II, starting from Articles 289-296 of the Criminal Code which are categorized as crimes against decency. The criminal act of obscenity is not only regulated in the Criminal Code but also regulated in Law Number 23 of 2002 concerning Child Protection which was later amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter called the Child Protection Act).

Child protection aims to ensure that children's rights are fulfilled so that they can live, grow and develop and be able to participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination for the realization of quality, noble, and prosperous Indonesian children.⁶

The problem of sexual violence, especially sexual abuse and sexual intercourse with children, needs to receive more intensive and serious attention. This is because there is a tendency that child victims are often neglected by competent institutions in the criminal justice system, which should provide adequate attention and protection based on law. This should not

¹Mien Rukmini, Aspects of Criminal Law and Criminology (An Anthology), Alumni, Bandung, 2006, p. 81.

²Andi Hamzah, Indonesian Criminal Procedure Code. Sinar Graphics, Jakarta, 2012, p. 76

³Setiawan. S. Review Regarding the Implementation of Investigations Against the Crime of Copulation Against Minors with Underage Actors Associated with the Rights of the Suspect. Alumni, Bandung, 2010, p. 6.

⁴Nashriana, Criminal Law Protection for Children in Indonesia, Raja Grafindo Persada, Jakarta, 2011, p.13

⁵Darwan Prinst, Criminal Procedure Code An Introduction, Djibatan, Jakarta, 1989, p. 92.

⁶Maidin Gultom, The Problem of Child Protection. Pressindo Academy, Jakarta, 1989, p. 18.

have happened, because after all victims still have the right to be treated fairly and have their rights protected.⁷

The Child Protection Law has provided an age limit for children, namely people who are aged 18 and under, if a crime occurs against them, the law is the guideline for law enforcers to conduct investigations and impose sanctions on the perpetrators. One of the institutions with the most important role in handling the problem of criminal acts of obscenity and sexual intercourse with children is the Indonesian National Police.⁸

The Indonesian National Police is an institution that is at the forefront of handling and disclosing cases that occur in society. This is confirmed in Law Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) Article 1 point 1 which states "An investigator is an official of the Indonesian National Police or certain civil servant officials who are given special authority by law. law to conduct an investigation". Furthermore, Article 1 number 2 states that an Investigation is a series of actions by an Investigator in matters and according to the method regulated in the Law to seek and collect evidence that occurred and to find the suspect.

The police in their duties as investigators in cases of sexual abuse and sexual intercourse against children are not only guided by the Criminal Procedure Code but are also guided by the Child Protection Law and Law Number 12 of 2022 concerning Crimes of Sexual Violence (hereinafter referred to as the TPKS Law). Article 4 of the TPKS Law states several types of sexual violence, namely:

1. Crimes of sexual violence consist of:
 - a. non-physical sexual harassment;
 - b. physical sexual abuse;
 - c. forced contraception;
 - d. forced sterilization;
 - e. forced marriage;
 - f. sexual abuse;
 - g. sexual exploitation;
 - h. sexual slavery; And
 - i. electronic based sexual violence.
2. In addition to the Crime of Sexual Violence as referred to in paragraph (1), the Crime of Sexual Violence also includes:
 - a. rape;
 - b. obscenity;
 - c. intercourse with a child, obscene acts against a child, and/or sexual exploitation of a child;
 - d. acts of violating decency that are contrary to the will of the Victim;
 - e. pornography involving children or pornography that explicitly contains violence and sexual exploitation;
 - f. forced prostitution;
 - g. criminal acts of trafficking in persons aimed at sexual exploitation;
 - h. sexual violence within the household;
 - i. money laundering crime whose predicate crime is a Sexual Violence Crime; And
 - j. other criminal acts that are expressly stated as Crimes of Sexual Violence as regulated in the provisions of laws and regulations.

⁷Rukmini M, Aspects of Criminal Law and Criminology, PT. Alumni, Bandung, 2009, p. 21

⁸Sasangka Day, Investigation, Detention, Prosecution, and Pretrial in Theory and Practice, Back and forth, Bandung, 2007, p. 22.

The investigative process carried out by the police can go through the stages of investigation, investigation, examination of witness-victims, examination of suspects, check of crime scenes, post-mortem examination of victims, filing (P21), delegated to the district attorney. In the process of investigating a crime is a series of investigative actions to search for and find evidence about a crime. These actions include summons and examination of witnesses, confiscation of evidence, searches, arrests, detentions.⁹

The implementation of the investigation process by the Police into cases of child abuse and sexual intercourse did not always run smoothly, because it was too slow and there were many performance errors from the investigators in handling the case, causing dissatisfaction from the victim's family because the perpetrator escaped or ran away because he knew that he had been reported to the authorities. The child also has not fully obtained his rights as a victim, for example the child's right to receive treatment or rehabilitation, which has been regulated in the Child Protection Act, and the identity of the child has not been fully protected by investigators because the child has been interviewed by journalists and covered by the mass media.¹⁰

The phenomenon of sexual abuse and sexual intercourse against children as victims is a social problem that is very troubling to society, so it needs to be prevented and addressed. Therefore this problem needs serious attention from all parties, especially criminologists and law enforcers.¹¹

RESEARCH METHODS

According to Bambang Sunggono, the types of research are divided into 3 (three), namely normative legal research, empirical normative legal research, empirical/sociological legal research.¹² In this research, the type of research used is normative legal research/normative juridical research, namely an activity that will examine the internal aspects (to solve problems that exist within) of positive law. This is done as a consequence of the view that law is an autonomous institution that has no relationship.¹³ This research was conducted to examine the juridical analysis of the implementation of investigations into the crime of caning and/or sexual intercourse with children.

RESEARCH RESULTS AND DISCUSSION

The Investigation Process of the Criminal Act of Obscenity and/or Sexual Intercourse Against Children

Basically the process of investigating criminal acts of obscenity and/or sexual intercourse committed against children is the same as the process of investigating obscenity and sexual intercourse in general. The Investigative Process in question aims to uncover alleged criminal acts that have occurred or suspected criminal events by someone whose identity is unknown.¹⁴

The process of investigating criminal acts of obscenity and/or intercourse with children can be carried out in several stages, namely as follows:¹⁵

- a. Make a report

⁹Op.Cit., Mien Rukmini, p.42

¹⁰Chairul Huda. From No Crime Without Error To No Criminal Responsibility Without Error, Kencana Prenada Media, Jakarta, 2006, p. 61

¹¹*Ibid*

¹²Bambang Sunggono, Legal Research Methodology, PT RajaGrafindo, Jakarta, 2003, p. 32

¹³Bambang Waluyo, Legal Research in Practice, Sinar Graphic, Jakarta, 2002, p. 15-16.

¹⁴Satjipto Rahardjo, Building Civilian Police: Legal, Social and Community Perspectives, Cet. 2nd, Kompas, Jakarta, 2007, p. 11

¹⁵Pinnasalo, Implementation of investigations into perpetrators of criminal acts of sexual abuse of children (Case Study at West Pasaman Police). Andalas Press University, Padang, 2011, pp: 1-10.

These reports were obtained from reporters who had reported allegations of criminal acts of obscenity and/or intercourse with children. As contained in Article 1 point 24 of the Criminal Procedure Code, what is meant by a report is a notification delivered by a person due to or under an obligation under the Law to the authorized official regarding a criminal incident that has occurred or is currently or is suspected to be occurring.

The complainant who has submitted a report to the authorized apparatus will then be followed up by the authorized apparatus. Law enforcement officials must make notes in a separate notebook or in a case register book, then they must be given a report identity. The identity of the report is made by numbering it in the case register.¹⁶

b. Do an investigation

According to Article 1 number 5 of the Criminal Procedure Code, an investigation is a series of investigative actions to search for and find an event that is suspected of being a crime in order to determine whether or not an investigation can be carried out according to the method stipulated in the law. The actions under investigation are as follows:¹⁷

- 1) Determine who the reporter is;
- 2) Determines what events are reported;
- 3) Where the event took place;
- 4) When the event occurred; And
- 5) As well as the chronology of events that occurred.

c. Doing a post mortem et refertum (VeR)

After the report is completed, the investigator must immediately take the victim to the hospital or forensic laboratory (labfor) to do a post-mortem examination. The post mortem is based on the LP (police report) that was reported by the previous complainant.¹⁸

Visum et Repertum(VeR) is a certificate issued by a doctor to the police and courts. VeR has legal evidence and evidence in criminal cases. The VeR contains written reports about what was seen and found on objects/victims examined by the VeR which can be requested for living people, for example victims who were injured due to violence, poisoning, rape, and psychiatric cases.¹⁹

The results of the post-mortem examination are confidential and the families of the victim and suspect may not take the results of the post-mortem examination. Only authorized investigators are allowed to take the results of the post mortem. Furthermore, the results of the post-mortem were made in the minutes and became documentary evidence.²⁰

d. Doing a case

The title of the case is contained in the Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Investigation of Criminal Acts (hereinafter referred to as Perkapolri No. 6 of 2019), namely the activity of conveying an explanation of the process of investigation and investigation by investigators to the title participants and continued group discussions to obtain responses/ input/corrections to produce recommendations to determine the follow-up

¹⁶Ibid.

¹⁷Ibid

¹⁸Princess Paramitha Dwinanda. Criminological Review of the Crime of Obscenity Against Minors (Case Study in Surakarta City). Scientific Publications. Muhammadiyah University of Surakarta, 2018, pp, 1- 19.

¹⁹Ibid

²⁰Ibid

of the inquiry and investigation process. In this case, before entering the investigation process, a case title must be held in advance to enter the investigation process.

Article 2 of the Perkapolri states that the title of the case is carried out for:

- 1) determine whether it is a criminal act or not;
- 2) determine the suspect;
- 3) termination of investigation;
- 4) delegation of cases; And
- 5) solving investigative problems.

e. Send a letter of notification of the start of the investigation

Notice of Commencement of Investigation (SPDP) is a letter issued by an investigator addressed to the public prosecutor which aims to notify about an investigation into a case. The public prosecutor will respond to the SPDP by appointing a research prosecutor to take part in the investigation process in cases of sexual abuse and/or intercourse with children.²¹

f. Examining witnesses

Witness examination includes the following:²²

- 1) examination of victim witnesses,
- 2) Examination of expert witnesses, and
- 3) Psychologist examination.

g. Doing a case

Article 25 Perkapolri Number 6 of 2019, states:

- (1) Determination of suspects is based on at least 2 (two) pieces of evidence supported by evidence.
- (2) The determination of the suspect as referred to in paragraph (1) is carried out through the mechanism of a court case, unless caught red-handed.

h. Arrest of suspects

Article 1 number 20 of the Criminal Procedure Code states that an arrest is an act of an investigator in the form of temporarily restraining the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation and prosecution and or trial in matters and according to the manner regulated by law.

i. Examine the suspects

In Article 1 number 14 of the Criminal Procedure Code it is stated that a suspect is a person who, because of his actions or circumstances, based on initial evidence, should be suspected of being the perpetrator of a crime.

j. Collection of evidence

Investigators make evidence and evidence into one file which will then be sent to the prosecutor's office to be used in the trial process.²³

k. Filing

Doing the filing, making an overview or conclusion of the investigation. After filing, the file is submitted to the superior investigator for research. After the documents are complete and meet the requirements, binding and sealing are immediately carried out. Next, the file is submitted to the public prosecutor.²⁴

If within 14 (fourteen) days the case files are not returned by the public prosecutor, the case files are considered complete (P-21). If the file is declared incomplete by the

²¹Double King Wilson's tambunan. Implementation of Police Investigation and Investigation of Children Perpetrators of Obscene Crimes (Study at the Medan City Police). USU Law Journal, Volume 5, Number 1, (January 2017), 2017, pp: 128- 135.

²²Ibid

²³Tambunan Wilson Raja Ganda, op.cit.,

²⁴Ibid

public prosecutor (P-18), the investigator must complete the file based on the instructions of the public prosecutor (P-19).

The end of the investigation process which is the investigator's task is marked by the complete investigation report (P-21) or commonly referred to as Stage 1 and the handing over of evidence and also the suspect to the public prosecutor (P-22) or referred to as Stage 2.²⁵

Factors Hindering the Investigation of the Crime of Obscene and/or Sexual Affair Against Children

In carrying out investigations into cases of sexual abuse and/or intercourse with children, the investigator certainly encounters obstacles, these obstacles can come from internal and external factors. These obstacles include:

a. Internal factors

1) Investigator knowledge

The police always respect the rights obtained by suspects. The police's knowledge of the suspect's rights is very important for the suspect and for the police themselves, because no party will be harmed. But if you only know without doing the real thing (carrying out an investigation), it can influence the police in fulfilling the suspect's rights. Things encountered in the field are sometimes very different from what is contained in the law, so the experience of investigating is very influential in applying knowledge about the rights of suspects.²⁶

Related to this, there have been efforts from the government to deal with it, namely by setting sufficient understanding requirements that must be owned by investigators. This is as regulated in Article 21 of the TPKS Law, as follows:

(1) Investigators, public prosecutors and judges handling cases of sexual violence crimes must meet the following requirements:

a. have integrity and competence in handling cases from the perspective of human rights and victims; And

b. has attended training related to Handling cases of Sexual Violence Crimes.

2) Difficult to Obtain Visum Et Repertum

The lack of finances funds the post mortem results of the victims which will be used as evidence or for child psychologists. Most of the victims and their families who carried out the post mortem came from families with lower economic class. The post-mortem process, which was not cheap, was considered very burdensome for the victims and their families, coupled with the severe trauma experienced by the victims. The rate for conducting a post-mortem ranges from Rp. 600,000 - Rp. 300,000 not including medicines that must be redeemed independently. Administration in carrying out a post mortem is also not easy.²⁷

3) Difficult to present witnesses

Victims must be able to present at least 2 (two) witnesses in the process of the case. Generally, acts of sexual abuse are carried out in a closed and limited environment, or even if it is open, only a few people are willing to be witnesses to the incident, so sexual harassment often results in losses for the victim rather than the perpetrator, not infrequently even due to certain pressures.²⁸

²⁵Ibid.

²⁶Good luck, Muhammad. Investigation of Criminal Acts of Obscene Children at the Pekanbaru City Police. Journal of Law Science, Volume II, Number 2, 2015, pp: 1-15

²⁷Ibid

²⁸Ibid

4) The suspect fled

It is difficult for the police to trace the whereabouts of the suspect because the perpetrator does not live at his real address. Thus making it difficult for the police to examine the suspect.²⁹

b. External factors

In addition to internal factors, investigators' obstacles in carrying out investigations also come from external factors, including the following:

1) Facility factors or facilities that support law enforcement

The location that is usually used by perpetrators of child abuse is also an obstacle for the police in uncovering criminal acts of child abuse, because in that room there are no people other than the victim and the perpetrator himself.³⁰

2) Community factors, namely the response of the immediate environment and the wider community responding to children who are victims of sexual abuse are children who have been disgraced, ugly, embarrass the family, bring bad luck or have no future so that children will also acquire and develop a negative image of themselves.³¹**CONCLUSION**

The process of investigating criminal acts of sexual abuse and/or intercourse with children is carried out in several stages, namely making reports, conducting investigations, conducting visum et refertum (VeR), conducting cases, sending notices of commencement of investigations, examining witnesses, conducting case titles, determining suspects, arresting suspects, conducting examinations of suspects, collecting evidence and conducting filings.

The inhibiting factors in the investigation of criminal acts of sexual abuse and/or intercourse with children are obtained from internal and external factors, internal factors include the knowledge of investigators, difficulty obtaining visum et repertum, difficulty in presenting witnesses and suspects running away. While external factors include facilities or facilities that support law enforcement and community environmental factors.

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²⁹Ibid

³⁰Kurniasari, Handling Cases of Sexual Abuse in Children (Case Study in the Legal Area of the Surakarta Police in 2014). Publication manuscript. Muhammadiyah University of Surakarta, 2015, pp: 1-11.

³¹Ibid

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