



Settlement of Criminal Cases of Children as Perpetrators of Sexual Harassment Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

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ABSTRACT

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Nowadays, crimes involving children are very common. One of them is sexual abuse by children. The aims of this study is to find out (1) the settlement of criminal cases of children as perpetrators of sexual harassment based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA); and (2) criminal sanctions for children who commit sexual abuse in accordance with the concept of the SPPA Law. The research method used is a type of normative legal research. The results of the study show (1) that the settlement of criminal cases of children as perpetrators of sexual abuse based on the SPPA Law can be carried out in 2 (two) ways, namely through litigation or trial and also through diversion or mediation, which are useful for providing opportunities for a child to improve himself. ; and (2) criminal sanctions for children who commit sexual abuse in accordance with the concept of the SPPA Law can be in the form of imprisonment and can also be action sanctions. The reason is, in the event that a child commits a criminal act of obscenity, diversion cannot be sought if the criminal penalty is more than 7 years. Nevertheless, the judge in deciding the case of criminal sanctions against the crime of sexual abuse by children must still pay attention to the mental state and rights of the child, namely by providing sanctions in the form of actions as regulated in Article 82 paragraph (1) of the SPPA Law. able to be applied properly and appropriately by students and parties involved in it.

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1. INTRODUCTION

In essence, children are part of the survival of human life and the sustainability of a nation and state which cannot be separated from one another (Pramukti & Primaharsya, 2014). Based on the constitution in Indonesia, children have a very important and strategic role where it has been explicitly stated that the State will guarantee the rights of every child to the survival, growth and development of children as

well as protection against discrimination and violence.

Nowadays, crimes involving children are very common. One of them is sexual abuse by children. Whether the child is a victim of abuse or a perpetrator of sexual abuse. This happens because of the lack of supervision from parents to children in using the internet (KPAI, 2016).

Evil deeds embedded in children arise due to the influence of bad reading, pictures and films which will make children have the desire

and will do evil deeds to someone or other children (Pramukti & Primaharsya, 2014). If children fill their spare time with bad shows such as pornographic images, it will have a negative influence on children's development. Especially on sexual stimulation for children.

Sexual harassment in Collier's opinion is all forms of unwanted treatment for those who receive such treatment where the treatment is all forms of behavior of a sexual nature, and sexual harassment can occur or be experienced by every woman. Nowadays, sexual abuse is very common among children. Based on the records of the Indonesian Child Protection Commission (KPAI) which states that the number of victims of sexual abuse that occurs in children is increasing every year. It can be seen from the percentage which increased 100 percent from 2013 to 2014 whether it was children who were victims of sexual abuse or children who acted as perpetrators of sexual harassment (KPAI, 2016).

In addition, it was also found that child victims of sexual violence can become perpetrators of sexual violence. Children can commit sexual violence against siblings, classmates, and peers (Lakhani, 2018). KPAI found that 78.3 percent of children were perpetrators of violence and most of them were because they had been victims of violence before or had seen violence done to other children and imitated. With regard to sexual harassment behavior, it shows that there is a relationship between watching pornography and perpetrators of sexual violence and crime, children easily imagine and do what they see, bypassing the logic center, so that it can encourage children to sexually abuse their friends or fellow children, without knowing what the effect (KPAI, 2016).

Thus, it can be said that the background or cause of cases of sexual abuse involving children is the development of technology that makes it easier for children to access pornographic sites via the internet and the lack of supervision from parents. Due to the easy access of pornographic sites on the internet for children who view pornographic sites, children imitate and commit acts of sexual harassment, so proper and integrated legal handling procedures are needed between the police, prosecutors and courts with due regard for the rights of the people. Children's rights, in particular, start from the investigation process carried out by the police as the front line in the criminal justice system.

In accordance with the mandate of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law), the settlement of criminal cases of children as perpetrators of sexual abuse must prioritize a diversion approach and restorative justice. Therefore, it is necessary to formulate/concept the implementation of the investigation process that is unconventional and in accordance with the procedural law of the juvenile criminal justice system.

Based on the background described above, the problem statement in this study can be stated in the research questions as follows:

- a. How is the settlement of criminal cases of children as perpetrators of sexual harassment based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System?
- b. What are the criminal sanctions for children who commit sexual abuse in accordance with the concept of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System?

The objectives of this research are as follows:

- a. To reveal the settlement of criminal cases of children as perpetrators of sexual harassment based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.
- b. To reveal the criminal sanctions for children who commit sexual abuse in accordance with the concept of the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.

2. METHODS

This research uses normative legal research methods. According to I Made Pasek Diantha, normative legal research serves to provide juridical arguments when there are vacancies, ambiguities and conflicting norms. Furthermore, this means that normative legal research plays a role in maintaining critical aspects of legal scholarship as a normative science (Diantha, 2017). The type of approach used is a statutory approach and a conceptual approach. Sources of legal materials needed are primary legal materials, secondary legal materials and tertiary legal materials. Regarding the technique applied in the collection of legal materials used, namely through the technique of literature review (study document) with a card system (card system). The card system used is a

quote card to record the name of the author/author, book title, page and cite things that are considered important in order to answer the problems in this study (Soekanto & Mahmudji, 2013). In normative legal research, it is not data that is analyzed, but through legal materials as mentioned above. Thus, there is a close relationship between the analytical method and the problem approach. The analysis of legal materials that have been collected in this study will be carried out descriptively, evaluatively and argumentatively.

3. RESEARCH AND DISCUSSIONS

a. Settlement of Criminal Cases of Children as Perpetrators of Sexual Harassment Based on Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System

In order to resolve cases that are appropriate for children as perpetrators of crimes in the SPPA Law, 2 systems for resolving criminal cases against children in conflict with the law have been distinguished. The settlement of the case can be done through a juvenile court process or litigation and the second through diversion or penal mediation. Then what is the solution if the crime committed is a crime of sexual harassment or rape? The crime of rape itself is regulated in Article 285 of the Criminal Code (KUHP) with the meaning "Whoever by violence or threats of violence forces a woman to have sex with him outside of marriage, can be threatened with rape, with a maximum imprisonment of twelve years" (Moeljatno, 2011).

Regarding legal protection efforts for children, especially those in conflict with the law, the SPPA Law has specifically regulated diversion and restorative justice in the settlement of children's cases, which of course aims to ensure that the rights of children in this case who are in trouble with the law are more protected and guaranteed (Purnomo, 2017). In the SPPA Law, it is regulated that at the level of investigation, prosecution, and examination of a child's case in a district court, diversion must be sought if it fails, then the case will be continued through the juvenile court.

The settlement of cases through the courts according to the SPPA Law can be divided into 2 groups, namely:

1. Article 20 of the SPPA Law states that in the case of a criminal act committed by a child before the age of 18 (eighteen)

years and submitted to a court hearing after the child in question has exceeded the age limit of 18 (eighteen) years, but has not yet reached the age of 21 (twenty one). years, the child is still submitted to the Children's trial.

2. Article 21 paragraph (1) in conjunction with Article 21 paragraph (2) of the SPPA Law states that in the event that a child under the age of 12 (twelve) years old commits or is suspected of committing a criminal act, the child can be returned to the parent/guardian; or are included in education, coaching and mentoring programs in government agencies or LPKS in agencies dealing with social welfare, for a maximum of 6 (six) months, the decision is submitted to the court for stipulation a maximum of 3 days after.

In accordance with the provisions of Article 20 of the SPPA Law, every child who is still submitted to the juvenile court, of course the sanctions given will be different from the sanctions contained in the Criminal Code. Sanctions given to children as perpetrators of these crimes are regulated in Article 71 paragraphs (1) and (2) of the SPPA Law. In this provision there are 2 types of criminal sanctions (Criminal Punishment) for children, namely:

1. Basic Criminal:
 - A. Criminal Warning
 - B. Criminal with Conditions
 1. Coaching Outside the Institution
 2. Society service
 3. Supervision
 - C. Job Training
 - D. Coaching in Institutions
 - E. Prison
2. Additional Crime
 - A. Deprivation of profits derived from criminal acts; or
 - B. Fulfillment of customary obligations.

If we relate it to the provisions of imprisonment in Article 285 of the Criminal Code regarding the crime of rape, it is in accordance with Article 81 paragraph (2) of the SPPA Law which is basically a prison sentence that can be imposed on a child for a maximum of 1/2 (one half) of the maximum threat of imprisonment for a child. adults, then the prison sentence contained in Article 285 of the Criminal Code regarding the crime of rape must be reduced from its maximum which is a maximum of of 12 years, or it can be said that

the maximum prison sentence for children as perpetrators of the crime of rape is 6 years.

However, this trial route also has its drawbacks. These weaknesses can be in the form of a bad influence on the juvenile criminal justice process (Dewi & Syukur, 2011):

- a. The occurrence of trauma by the child towards the trial due to the behavior of the officers at every stage
- b. The creation of a stigma and a label as a bad person or criminal in the perpetrators, which in the end the child is feared will do evil;
- c. Expulsion of the child from school.

Therefore, in order to overcome the above problems, the SPPA Law has provided a solution with a diversion system for children as criminals.

According to (Marlina & Atif, 2009) stating that diversion is a policy that is carried out to prevent perpetrators from the formal criminal justice system to provide protection and rehabilitation (Protection and rehabilitation) to perpetrators as an effort to prevent children from becoming adult criminals. From this understanding it can be said that diversion is an effort to protect children in solving cases so that the child can improve himself

This diversion is in accordance with the opinion of (Hambali, 2019), child protection is an effort that supports the implementation of the rights and obligations of the child himself. Therefore, a child who obtains and maintains the right to grow and develop in life in a balanced and positive manner means getting fair treatment and avoiding threats that can harm

Based on Article (5) to Article 14, Article 29, Article 42 and 52 paragraphs (2)-(6) of the SPPA Law, the settlement of cases through diversion must be sought at the level of investigation, prosecution and examination of children's cases in court by prioritizing a restorative justice approach. The word "must strive for" means that child law enforcement officers from investigators, prosecutors and judges have an obligation to make the diversion process workable. The obligation to seek a diversion process starting from the investigation, prosecution and examination of children's cases in the district court, is carried out in the case of a criminal offense punishable by imprisonment for under 7 (seven) years and is not a repetition of a crime (Hirdayadi & Susanti, 2017).

Restorative justice here has the meaning of an approach in which it focuses more on a

condition that will create justice and balance for a perpetrator of a crime (who here is a child as a perpetrator of a crime) and the victim himself, namely a victim of rape. The procedural mechanism in criminal justice which initially only focuses on punishment will later be transformed into a dialogue and mediation process to create an agreement on the settlement of criminal cases that is more fair and balanced for the victims and perpetrators (Tengens, 2021).

In the case of a child as a perpetrator of a crime of rape, the process of implementing the diversion of a perpetrator requires the consent of the victim and/or the victim's child's family as well as the willingness of the child and his family. That's because in the Indonesian Criminal Code the maximum criminal sanction that can be given to the perpetrator of rape is 12 years in prison and also in this case there is a victim, so it can be said that this crime is a serious crime so it is not in accordance with what is excluded in article 9 paragraph 2 SPPA Law.

The diversion process is carried out through deliberation involving children and their parents or guardians, victims and or their parents or guardians, community counselors, and professional social workers based on a restorative justice approach. In addition, if necessary, the deliberation can also involve social and/or community welfare workers (Hirdayadi & Susanti, 2017).

This diversion arrangement is carried out with the supervision of the community advisor. This process is carried out until the diversion process reaches an agreement to be carried out. The diversion process itself will produce 2 possibilities, namely a successful diversion agreement, and the second is an unsuccessful diversion agreement.

If the diversion process has succeeded in reaching an agreement, the investigator is tasked with submitting the diversion report along with the diversion agreement to the head of the district court for determination. However, if the diversion process is not agreed upon by both parties, the case will be transferred to the trial process at the local district court.

The results of the diversion agreement in accordance with Article 11 of the SPPA Law include:

- a. reconciliation with or without compensation;
- b. handover to parents/guardians;

- c. participation in education or training in educational institutions or LPKS for a maximum of 3 (three) months; or
- d. society service.

b. Criminal Sanctions for Children Who Commit Sexual Abuse in Accordance with the Concept of the law of the Republic of Indonesia Number 11 Of 2012 Concerning The Juvenile Criminal Justice System.

Sexual harassment or obscenity is an event that is currently in the spotlight, especially because nowadays there are many criminal cases of sexual harassment or obscenity perpetrated by children. Gurian defines sexual harassment as an act involving an adult as the abuser, but abuse can also occur "when a child is used as an object of sexual gratification by another child under the age of 18 (eighteen) who takes over the temporary duties of the parents" (Gurian, 2016).

The application of criminal sanctions against perpetrators of crimes of sexual harassment is not only applied to adults, but also to children who are perpetrators of crimes of sexual harassment. The definition of children can be found in Law Number 35 of 2014 concerning Child Protection (hereinafter referred to as the Child Protection Law). Article 1 number 1 of the Child Protection Law provides an understanding of a child as someone who is not yet 18 (eighteen) years old, including those who are still in the womb.

According to (Soesilo, 1996) what is meant by obscene acts are all acts that violate decency/politeness or heinous acts which all have to do with sexual lust, for example kissing, groping the genitals, groping the breasts, intercourse is also included in this sense).

In the case of children as perpetrators of criminal acts of obscenity, the Child Protection Law is used to apply criminal sanctions to children in conflict with the law. The reason for using the Child Protection Act in this case is so that children's rights while undergoing legal processes can still be fulfilled and protected. Children in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime (Article 1 point 3 of the SPPA Law). In the event that a child commits a criminal act of obscenity by first making advances against the victim, then the act violates Article 76E of the Child Protection Law, which states:

"Everyone is prohibited from using violence or threats of violence, coercing, deceiving, committing a series of lies or persuading children to commit or allow obscene acts to be carried out".

The penalties for violating Article 76E of the Child Protection Law, regulated in Article 82 of the Child Protection Law are:

- (1) Anyone who violates the provisions as referred to in Article 76E shall be sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000 (five billion rupiah).
- (2) In the event that the criminal act as referred to in paragraph (1) is committed by a parent, guardian, child caretaker, educator or educational staff, the penalty shall be added to 1/3 (one third) of the criminal threat as referred to in paragraph (1).

A child who commits a criminal act of obscenity can be held criminally responsible if his age has reached 14 (fourteen) years. If at the time of committing a crime the child is over 12 (twelve) years old, but has not yet reached the age of 14 (fourteen) years, then the punishment that can be given to the child is a maximum of 1/2 (half) of an adult's imprisonment. (Article 81 paragraph (2) of the SPPA Law). However, if the crime committed by the child is punishable by death or life imprisonment, the sentence imposed is a maximum imprisonment of 10 (ten) years (Article 81 paragraph (6) of the SPPA Law).

In imposing criminal sanctions on children in conflict with the law, including children who commit crimes of sexual abuse, the judge is obliged to pay attention to the needs of the child, especially his rights as a child. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia as the highest norm stipulates that "every child has the right to survival, growth and development and the right to protection from violence and discrimination".

Based on the convention on children's rights, children's rights can generally be grouped into 4 (four) categories, including (Joni & Tanamas, 2009):

- a. The right to survival (The Right To Survival), namely the rights to preserve and maintain life (The Right of Live) and the right to obtain the highest standard of health and the best possible care.

- b. The right to protection (Protections Rights), namely the rights in the convention on the rights of the child which includes the right to protection from discrimination, acts of violence and neglect for children who do not have families for refugee children.
- c. The right to growth and development (Development Rights), namely the rights of children in the Convention on the Rights of the Child which includes all forms of education (formal and non-formal) and the right to achieve an adequate standard of living for the child's physical, mental, spiritual, moral and social development (the rights of standard of living).
- d. The right to participate (Participation Rights), namely the rights of children which include the right to express opinions in all matters affecting the child (the rights of a child to express her/his views freely in all matters affecting the child).

Meanwhile, in the Criminal Code it is emphasized that a person can be held accountable for his actions because of the self-awareness of the person concerned and he also has understood that the act is prohibited according to applicable law (Djamil, 2013). In the case of a criminal act of sexual abuse committed by a child, based on Article 82 paragraph (1) of the Child Protection Law, there is no reason to abolish the punishment for the child and is capable of being responsible (physically and mentally healthy).

However, the judge still has to consider that a child in conflict with the law is still a "child" by taking into account the background of the occurrence of a crime and the values of justice, the judge can give sanctions in the form of actions to children in conflict with the law.

The form of action sanctions given to Children in Conflict with the Law, among others (Article 82 paragraph (1) of the SPPA Law):

- a) Return to parent/guardian;
- b) Submission to someone;
- c) Treatment in a mental hospital;
- d) Treatment in LPKS;
- e) Obligation to attend formal education and/or training held by the government or private bodies;
- f) Revocation of driving license; and/or

- g) Correction of the consequences of a criminal act.

(Sudarto, 2001) argues that in juvenile justice there are activities of examining and deciding cases that are focused on the interests of the child, namely all activities carried out by the police, prosecutors, judges and other officials, must be based on a principle that is for the welfare of the child and the interests of the child.

The SPPA Law basically aims to protect the rights of children in conflict with the law. The protection of the rights of children in conflict with the law is a form of implementation of restorative justice which is carried out through diversion efforts for children in conflict with the law. In Black's Law Dictionary, it is mentioned about diversion namely:

Diversion and Diversion Program.
Diversion that is:

"A turning a side or altering the natural course or route of a thing. The term is chiefly applied to an authorized change and alteration of the water course to the prejudice of a lower riparian, or the authorized use of funds." (Henry Campbell Black, 1990).

Next Diversion Program, in Black's Law Dictionary, mentioned:

"A disposition of a criminal defendant either before or after adjudication of guilt in which the court directs the defendant to participate in a work or educational program as part of probation" (Henry Campbell Black, 1990).

Meanwhile, the definition of diversion is based on Article 1 point 7 of the SPPA Law, as follows:

"Diversion is the transfer of settlement of children's cases from the criminal justice process to processes outside of criminal justice".

In the juvenile criminal justice system, diversion must be sought starting from the level of investigation, prosecution and examination of cases in court. The aim of pursuing diversion is enshrined in Article 6 of the SPPA Law, namely:

- a. Achieve peace between victims and children;
- b. Resolving child cases outside the judicial process;
- c. Protecting children from deprivation of liberty;

- d. Encouraging communities to participate; and
- e. Instill a sense of responsibility in children.

For the implementation of diversion for children in conflict with the law, there are conditions that must be met. This is regulated in Article 7 paragraph (2) of the SPPA Law, which states that diversion can only be attempted for criminal acts punishable by imprisonment for under 7 (seven) years and not a repetition of the crime. This requirement is cumulative or must be met both, if one of them is not met then diversion cannot be applied.

In the case of a criminal act of sexual abuse committed by a child who violates Article 76E of the Child Protection Law, diversion cannot be attempted, because in this case the violator of Article 76 of the UUPA is charged with a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 5,000.000,000,- (five billion rupiah) (Article 82 paragraph (1) of the Child Protection Law).

Therefore, in the case of a criminal act of sexual abuse committed by a child, the judge cannot give a decision in the form of diversion, but in the form of action sanctions in accordance with Article 82 paragraph (1) of the SPPA Law.

4. CONCLUSION

Based on the discussion that has been stated above, it can be concluded as follows:

- a. Settlement of criminal cases of children as perpetrators of sexual abuse based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System can be carried out in 2 (two) ways, namely through litigation or trial and also through diversion or mediation channels which are useful for giving an opportunity to a child. children to improve themselves. This is intended to provide legal protection for children even though the person concerned has committed a crime.
- b. Criminal sanctions for children who commit sexual abuse in accordance with the concept of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System can be in the form of imprisonment and can also be action sanctions. The reason is, in the case of a child committing a criminal act of obscenity, diversion cannot be sought. In accordance with the rules in Article 7 paragraph (2) of the SPPA Law that diversion can only be given to children who commit crimes with the threat of imprisonment for

under 7 (seven) years and not a repetition of the crime. Meanwhile, in the case of sexual abuse or harassment, the perpetrator of a crime is subject to a maximum imprisonment of 15 (fifteen) years, therefore diversion cannot be applied to children who commit crimes of sexual harassment or abuse. Nevertheless, the judge in deciding the case of criminal sanctions against the crime of sexual abuse by children must still pay attention to the mental state and rights of the child, namely by providing sanctions in the form of actions as regulated in Article 82 paragraph (1) of the SPPA Law.

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