

Policy Law Enforcement of Crime Sexual Violence against Children Based on Law Number 11 of 2022



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ABSTRACT: The presence of Law Number 11 of 2022 concerning Crimes Sexual Violence seeks to provide legal umbrella for existing problems, as well as manifestation Child Protection which has not been accommodated, especially in the criminal burden perpetrators of sexual crimes and the stages of efforts to recover victims due to sexual crimes they have experienced. It can be said that TPKS Law is synchronization of Child Protection Law by emphasizing sexual violence against children, through structuring stages of recovery given by children as well as in order to improve judicial process as special treatment needed by children. This research uses normative legal research methods through the approach of applicable laws and regulations and literature studies. The statutory regulation approach originates from primary data in form Law Number 35 of 2014 concerning Child Protection and Law Number 11 of 2022 concerning Sexual Crime Crimes and literature studies. The results this study will show that presence of TPKS Law has had a positive impact and new legal protection efforts for vulnerable people, especially children as victims sexual crimes.

KEYWORDS: Children, Crimes Sexual, TPKS

I. INTRODUCTION

All forms of crime must be avoided when considering a child's development in order to protect their interests. However, the reality is that there are more instances of children becoming victims of crimes, with sexual assault being the most common crime against them. It definitely poses a threat to the younger Indonesian generation over time, so effective law enforcement is required to keep an eye out for any potential criminal activity. A setback in the development of the idea that children should receive training to develop their identity in the future has been made clear by the revelation in several cases that children were used as objects of sexual stimulation by adult actors. (Aryani, 2021)

The growing number of child sexual crimes indicates that Indonesian law enforcement has not taken this issue seriously, as evidenced by the high number of child sexual crimes that occurred in 2020, which accounted for 52% of all cases, or 2700 cases. Children are the next generation that the state works to maintain their dignity, even though they need protection in order to improve the quality of the country's future generations. (Arief, 2016)

There issues of crime in general and child sexual crimes are different in that the long-term effects of sexual crimes are very serious because they cause gradual psychological and physical harm that impedes the emotional development of children who are crime victims. The existence of Law Number 17 of 2016 with weighted criminal threats and criminal consequences in the form of chemical castration, installation of electronic detection devices, rehabilitation, and public disclosure of the identity of the perpetrator for perpetrators of sexual violence, however, has provided sufficient legal tools. From the victim's perspective, it is still necessary to obtain recovery for what happened to him. (N. Hidayati, 2014)

It should be progress that the changes are solely to impose sanctions more severe punishment for perpetrators of sexual crimes against children since Law Number 23 of 2002, as amended by Law Number 35 of 2014, contained regulations protecting the interests of children. It is claimed that this law is a paradigm that is necessary to safeguard the interests of children because it explains that one of the highly prohibited acts is sexual crime. However, a new focus on regulations is required because sexual crimes affect both women and children of all ages and come in many different varieties, and the current criminal penalties have no deterrent effect. (Kusworo & Fathonah, 2022)

The persistence of sexual violence in all societal contexts is not accompanied by a community understanding of the problem; rather, it is merely perceived as an immoral crime without taking into account the harm experienced by the victim. In actuality,

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the victim experiences prolonged trauma, which inspires him to commit suicide. The complexity of the issue ultimately resulted in the adoption of a new law on April 12, 2022, known as Law Number 11 of 2022 concerning Crimes of Sexual Violence.

It is easy to see the stages that went into creating the TPKS Law, which began in 2012 and was originally known as the PKS Bill. It was eventually added to the DPR's Priority National Legislation Program (Prolegnas) in 2016, but was ultimately delayed in the ratification process until it was repealed in 2020. It will be discussed again in 2021.

Birth of the TPKS Law was based on the concerns of the government and society, especially for children, that the process of settling cases of sexual crimes did not always provide justice for the victims, plus the large number of complaints of sexual crimes which over time could not be handled because there was no firmness over the existing legal framework. so that it becomes an obstacle for law enforcement officials in exploring the appropriate context of sexual crimes. This ratification is interpreted as an important benchmark for the government to be responsible for preventing and resolving all types of sexual crimes, up to how to treat victims in order to recover from these acts as a whole. (Lathif et al., 2022)

The crime of sexual violence does not escape the criminal elements that are fulfilled at the will of the act, according to the explanation in Article 1 Point 1 of the TPKS Law, which states that all forms of sexual violence are a form of violation of human rights that eliminate human dignity and are a form of discrimination that must be avoided. By developing criminal procedures based on modern justifications, ensuring that the threat of imprisonment will be increased, and optimizing the implementation of special rehabilitation, especially for children convicted, this provision aims to reduce, if not entirely eliminate, sexual violence. The Child Protection Act, on the other hand, governs the conditions under which children whose rights have been violated by sexual crimes they have witnessed can be restored. Although the certainty of legally and sustainably granting rights has not been fully explained. According to Article 90 of Law No. 11 of 2012 Concerning the Juvenile Criminal Justice System and Article 64, Paragraph 3 of the Child Protection Act, rehabilitation for children who have been victims is implemented both outside and inside of institutions. (Sagala, 2020)

It is also stated that children have the right to receive medical legal assistance and psychosocial rehabilitation in other provisions, specifically in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. To restore the physical health of children who have been victims or witnesses, medical rehabilitation places a greater emphasis on all comprehensive treatment efforts. Additionally, the Child Protection Law has changed the way that sexual crimes are viewed by the law as a category of crimes that harm children. As a result, the punishment for committing a sexual crime is now punishable by more than just imprisonment; there are also additional repercussions that serve as a warning to future offenders.

In accordance with the law, each law enforcement agency has established a special division and its procedures to handle sexual crime cases. However, in some regions, not all divisions and procedures have this authority, and they also lack adequate facilities for handling victims. Then, based on the legal culture, it is examined to determine whether law enforcement officials have up to this point continued to adopt societal norms regarding morality and sexual violence, not even a few victims have been held accountable for the sexual violence that has occurred.

In this case, the TPKS Law aims to offer a legal framework for ongoing issues as well as a type of child protection legal reform that hasn't been taken into account, particularly in the weighting of crimes against sexual crime offenders and the stages of efforts to recover victims as a result of sexual crimes they have experienced. The TPKS Law, which emphasizes sexual violence against children, synchronizes the Child Protection Law by establishing stages of recovery for young victims of sexual crimes and by enhancing the juvenile justice system to better meet the needs of children.

The TPKS Law is not exempt from implementation issues, of course, which call for alterations and the development of a new way of thinking among law enforcement officials. On the basis of the background information provided above, a thorough discussion of the design of criminal law enforcement against crimes involving sexual violence and the difficulties associated with putting the TPKS Law into practice will be held in an effort to protect children who have been the victims of such crimes. Based on the background above, the author will analyze the construction of criminal law enforcement against crimes of sexual violence against children and the challenges of implementing the TPKS law in efforts to ensure child victims of sexual crimes

II. LITERATURE REVIEW

There is no special legal protection for victims. Criminal acts of sexual violence are broken down into two categories in the Criminal Code the crime of rape for sexual intercourse, which is governed by Article 285, and the criminal act of sexual harassment, also known as the criminal act of obscenity, which is governed by Article 289 of the Criminal Code. Law Number 12 2022 Concerning Crimes of Sexual Violence further regulates this. Sexual violence is defined as any sexual act, attempt to perform a sexual act, comment or suggest sexual behavior that is unintentional or otherwise, an act of violation to have sexual intercourse by coercion against someone. Any sexual activity that is performed forcibly on a child by an adult or on another child by a child is considered sexual violence. Child prostitution and commercial use of children in sexual activity, as well as the

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solicitation of or coercion of children into participating in sexual activity, all constitute sexual violence. either intentionally or accidentally engage in sexual behavior. Sexual violence is when someone is coerced into having sexual contact against their will. In Indonesia, there has been an increase in the number of cases of sexual violence from year to year. The community is alarmed by the complexity of this crime of sexual violence. There are significant gaps in the protection of victims of sexual violence crimes, and the Indonesian Criminal Procedure Code is the primary source used by legal professionals to apprehend sexual violence offenders. There is no special legal protection for victims. Criminal acts of sexual violence are broken down into two categories in the Criminal Code the crime of rape for sexual intercourse, which is governed by Article 285, and the criminal act of sexual harassment, also known as the criminal act of obscenity, which is governed by Article 289 of the Criminal Code. Law Number 12 2022 Concerning Crimes of Sexual Violence further regulates this.

III. RESEARCH METHODS

There focusing on relevant laws and regulations as well as conducting literature reviews, this study employs normative legal research techniques. The law number 35 of 2014 concerning child protection and law number 11 of 2022 concerning sexual crime crimes and literature studies serve as the primary sources for the statutory regulation approach. Additionally, the author employs the deductive method to analyze using a descriptive analysis approach. Secondary data from various research publications, books, journals, and other legal materials makes up the data source. The process of conducting a literature study involves finding, reading, analyzing, comprehending, and citing a variety of literature that is relevant to the topics covered in this study. This literature can take the form of applicable laws and regulations, legal texts such as books, articles, and journals, as well as jurisprudence, court decisions with lasting legal effect, and other legal materials. Data was collected through a literature review, which involved searching, reading, researching, studying, and examining a variety of literature, including relevant laws and regulations, legal books, articles, journals, jurisprudence, court decisions with lasting legal effect, and other reading materials related to the legal issues to be discussed.(Sonata, 2015)

IV. RESULT AND DISCUSSION

In essence, sexual crimes against children are a violation of human rights (HAM). Children should be treated with respect so that they can live decent lives, based on the fundamental rights that God Almighty bestows upon them before and at the time of birth. Children will receive legal protection for children who are perpetrators or victims of criminal acts so that every aspect of their life is guaranteed, as stated in the Convention on the Rights of the Child (KHA) that children are categorized as not yet reaching the age of 18, that is, if they are still included in this scope. Because their identity and strength have not yet developed into those of adults, children at this age often have the potential to become victims and are therefore more vulnerable to becoming the victims of sexual crimes. They lack a strong enough mind to refuse invitations from sexual offenders and are therefore very easily persuaded by others. This starts with sexual deviations by perpetrators, known as pedophiles and opportunists. Opportunists tend to be more inclined towards adults who have a desire for both, specifically towards minors due to the opportunity, as well as have a desire for adults as a desire for sexual orientation in general.(Sari et al., 2022)

Law Number 11 of 2022 Concerning Crimes of Sexual Violence, which, if examined in the politics of criminal law policy, will improve all sub-systems in the criminal law system, is currently the embodiment of the renewal of law enforcement on sexual violence. Because systematic flaws in earlier law enforcement were discovered when it was examined in light of the legal system, resulting in less than ideal law enforcement implementation. Therefore, through the ratification of the TPKS Law, reforms that focus on the legal sub-system that consists of legal substance, legal structure, and legal culture are urgently required.(Zulfiko, 2022)

If we examine law enforcement factors starting with legal considerations, law enforcement personnel, facilities and amenities, society, and culture, it should be obvious that it needs to get monitoring, renewal, and evaluation in tandem with the dynamics of the times. It is necessary to rebuild or create new laws that focus on sexual crimes due to legal considerations, especially given how these crimes are perceived in society. If we examine criminal law policies more closely, the TPKS Law is one method of resolving issues with law enforcement. A criminal policy is intended to be a comprehensive function of the law enforcement apparatus, including the mechanisms of the police and courts, according to Prof. Sudarto's definition of the term in his definition of the legal substance of the TPKS Law.(Mokalu, 2022)

If we look more closely at the academic text of the TPKS Law, it becomes clear that one of its four main points of protection, which is for children, is a shift in the way the state and society view sexual crimes committed by children as a category. Sexual violence is seen as a type of crime that can be prevented by identifying the root cause of the issue, such as the gap in the position of children of the female sex as one of the vulnerable groups who are more subordinate than man, which is seen as a form of crime that is dangerous against children and even eliminates the dignity of the child in the future. In the fundamental

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paradigm, the state also accepts the exact opposite, namely that children and adults have equal rights and even require special consideration.

The TPKS Law combines both criminal and civil sanctions. TPKS is dealt with through criminal means. This entails that the nine different types of TPKS as well as a number of criminal acts have been made illegal. Criminalization is the action or determination of the authorities with regard to certain actions that are perceived by the community or groups of people as an act that can be punished as a criminal act (criminal act/ delict) or transforms an action into a criminal act so that it can be punished by the government.

Although if we look at sexual crimes it turns out that it can happen to anyone without exception to children and women who have a greater potential to become victims of sexual crimes, this provision is only intended for children as victims of sexual exploitation. Regarding the area of law enforcement, substance, structure, and legal culture are the three main considerations that must be made in order to comprehend children as victims of sexual crimes. In Indonesia, there is currently no comprehensive legal framework that governs various forms of sexual violence, making children's victims of violence and discrimination unprotected from all of its ramifications. Even though the Child Protection Act and other implementing regulations exist, they still only apply to crimes against children that are sexual in nature. (Rahayu, 2021)

In order to prosecute any type of sexual crime and ultimately uphold the victims' rights, a shift in legal thinking regarding how to position the various types of sexual crimes is based on an assessment of the experiences of child victims. The legal system has also changed, with the creation of a special procedural law that aims to give women and children more flexibility in accessing the justice system. Building a legal foundation for legal politics that results in sexual abuse of children. (Moeljatno, 2009)

In fact, if we look at the laws that are currently in place, there are already legal provisions in the Criminal Code and Criminal Procedure Code, as well as specifically in Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, which has been amended by Law No. 31 of 2014. Children's rights must be upheld through assistance from institutions like the Witness and Victim Protection Agency (LPSK) or other authorities in order to give them a sense of security, according to the definition of protection for children in the law currently in effect. However, the existence of the TPKS Law only serves to protect victims of sexual crimes in response to an uptick in cases from year to year, giving victims the impression that they have received adequate care and can obtain justice in the form of assistance and recovery for themselves. In addition, every law enforcement agency has a legal structure that frequently puts young women in awkward situations. For example, when reporting sexual crimes, victims are not asked about the crime itself but rather what clothing was worn, where the incident occurred, when it occurred, and how long it took the offender to leave his house. This question, which causes victims to be re-victimized, needs to be changed so that kids receive special treatment right away during the examination stage. (N. A. Hidayati, 2022)

The TPKS Law is a *lex specialis* from other TPKS legislation because it is a specialization of norms in looking at sexual violence. The formulation's implementation will center on national legal politics that are modified within the context of achieving national ideals, none other than ensuring the security and social welfare of those who are most at risk of becoming sexual violence victims, particularly children. Integrated Criminal Justice System for Handling Cases of Violence Against Women is a new step in the criminal justice system's structuring that is made possible by the TPKS Law (SPPT-PKKTP). In accordance with the TPKS Law, this system will subsequently develop into a specialty that links parties or agencies with the authority to handle cases of sexual crime by prioritizing convenience and victim accessibility, so that the mechanism can provide justice by limiting meetings with law enforcement officials so that it can be more effective, and avoid all forms of violence back in the system. (Ardianoor, 2020)

In fact, the TPKS Law's implementation will run into some extremely complex issues when it comes to enforcing criminal law. If it turns out that the factors causing sexual crimes are outside the purview of the criminal justice system, then criminal law is essentially a sub-system of all aspects of social control that cannot be complexly resolved crime problems that lead to on socio-psychological, socio-political, and so forth. This limitation of criminal law is a means of policy itself. Criminal law then emphasizes only that crimes will be treated symptomatically and not causally in its application. Criminal penalties also place more emphasis on the *ultimum remedium* principle, which is interpreted as a paradox that has an adverse effect on the offender.

It will be carried out integrally by tending to use non-penal means, namely looking at the initial factors that cause these problems in order to prevent them as early as possible, in order to overcome the limitations of criminal law that reflect its characteristics. The use of non-penal measures that result in forms of prevention will serve as a way to deal with the facilitation of crime brought on by particular factors. (Nurisman, 2022)

It is a challenge for the government to be able to harmonize the substance of law with the development of the existing legal culture; instead, the government should have taken an informal approach to society. Later, this form of prevention will be focused on the development of social, economic, and various public policies that support optimizing the implementation of the TPKS Law, especially regarding changes in legal culture. The rights of children who have been sexually abused will be upheld, including the right to community protection in addition to legal protection in the criminal justice system. (Wafiuddin, 2022)

V. CONCLUSIONS

The TPKS Law's ratification will undoubtedly have a positive effect on society, especially for young people who have been sexually assaulted and will now be protected by the law, giving them more courage to speak up and report these crimes to service organizations and law enforcement. This type of bravery is simply a manifestation of already-implemented legal and policy changes, which show that our infrastructure is getting better at protecting children who are victims as well as basic human rights. Not to be overlooked is the fact that all the elements of this law will give victims and their families a sense of security as victims or witnesses of sexual crimes. One of the factors that increases the courage and capability of the community to report cases of sexual violence they experience is the availability of legal systems, policies, and services that are safe, comfortable, and have a victim's perspective and human rights.

The TPKS Law was created with the goal of enhancing the current criminal justice system's tools for carrying out law enforcement against the widespread TPKS. Of course, if we look at it closely, it will cover every aspect of dealing with criminal acts of sexual violence, from attempts to stop them to handling victims' recovery efforts. This is a good law enforcement reform that also helps the community gain a comprehensive understanding of the TPKS and, at last, mobilizes action for prevention and special protection for children. It is hoped that as the younger generation in the future, the quality of children will be guaranteed.

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