

RESEARCH ARTICLE

CHILD SEXUAL VIOLENCE AND THE VIOLATION OF HUMAN RIGHTS: THE DARKEST SIDE OF LAW ENFORCEMENT IN INDONESIA

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The rise of news in the media related to sexual violence against children is a surprise to the community. The perpetrators actually come from the closest people like father, uncle, grandfather. Although this has been regulated in the Law on Child Protection, but in fact this crime continues. If not handled seriously, sexual violence against children can have a broad social impact on the community. Handling and healing psychological trauma due to sexual violence must receive great attention from all parties involved. This paper intends to identify the relationship between sexual violence against children with human rights violations.

Keywords: *Sexual Violence, Child, Human Rights Violations*

I. INTRODUCTION

Extensive media coverage of child sexual abuse has shocked the public. Based on data from the National Commission for Child Protection, in 2012 there were 2637 cases of child abuse, as many as 62 percent or 1637 cases were sexual violence. In 2013 it increased to 2,676, of which 54 percent was dominated by sexual violence. In 2014, 2,737 cases with 52 percent were sexual violence. Then in 2015 experienced a sharp increase in complaints, namely there were 2,898 cases with 59.30 percent of

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sexual violence. Finally in February 2018, the KPAI had received 223 complaints of child sexual violence. In reality, child sexual violence can be much higher than the data above. This is caused by the large number of victims who are reluctant to report to the authorities. The victims prefer to be silent because they feel they will be ostracized by the community or do not want to be involved in a complicated legal process.

In addition, the increasing number of children who are victims of sexual violence cannot be separated from the perpetrators who are difficult to identify. The perpetrators are actually the people closest to the victims such as their fathers, uncles, grandfathers, or neighbors. Friday (07/20/2018) a resident of Matangkuli District, North Aceh District was detained by the police. The man molested his own child who was 12 years old. The victim who was still sitting in the elementary school told the mother of the incident. After receiving the victim's report, the police immediately searched for the whereabouts of the perpetrator and arrested him at his own home.¹

Sexual violence against children does not only occur in the community where the victim lives. Cases of child sexual violence even exist in educational institutions which should be a place for learning. KPAI's commissioners in education recorded a series of cases of sexual violence against boys. In 2018, a junior high school in Jakarta had 16 students, 41 in Tangerang Regency, 65 students in Surabaya, and 12 students in Depok. Meanwhile, female students who were victims were in one of the East Java junior high schools which had as many as 25 female students, and a pesantren in Bandung Jawa Barat with 7 female students. The data shows that boys are more victims of sexual violence by unscrupulous teachers.²

Children are the gift of God Almighty as well as the nation's next generation who must be maintained, educated, and cared for properly. In the Indonesian constitution, children have a strategic position that is expressly stated that the State guarantees the right of every child to protection from violence and discrimination. This is stated in Article 45 paragraph (1) of Law Number 1 of 1974 concerning Marriage that both parents are obliged to maintain and educate their children as well as possible. Children's rights are also part of human rights contained in the Convention on the Rights of the Child which was approved by the United Nations General Assembly on November 20, 1989.

¹ <https://www.idntimes.com/news/indonesia/linda/223-kasus-kekerasan-seksual-anak-dalam-dua-bulan-terakhir-1/full>, accessed on 08 September 2018

² <https://republika.co.id/berita/pendidikan/eduaction/18/07/23/pcb3c9382-kpai-anak-lakilaki-rentan-jadi-korban-kekerasan-seksual>, accessed on 08 September 2018

Increasing cases of violence against children is something that must be considered by various sides. Based on this paper, it is important to study sexual violence against children, especially those carried out by adults as a sexual disorder or later known as pedophilia. This study is a literature study that tries to inform about the phenomenon of violence against children based on the perspective of human rights. This study is expected to make various sides aware of the importance of protecting children's rights, especially in terms of sexual violence.

This paper would highlight three main problems concerning to what is the meaning of sexual violence and human rights, what is the impact of sexual violence against children, and what is the relation between sexual violence against children and human rights violation.

II. SEXUAL VIOLENCE DEFINITION

Sexual violence against children according to *End Child Prostitution in Asia Tourism* (ECPAT) International is a relationship or interaction between a child and an older person or an adult such as a foreigner, sibling or parent and child used as an object of satisfying the sexual needs of the offender.³

Sexual harassment is any form of sexual connotation that is carried out unilaterally and unexpectedly by the target person, causing a negative reaction: shame, anger, offense and so on to the person who is the victim of abuse. Sexual abuse occurs when the offender has more power than the victim. The range of sexual harassment is very broad, including: flirting, naughty whistling, comments that connote sex, porn humor, pinching, pokes, claps or touches on certain body parts, certain movements or sexual gestures, invitations to date with lure or threat, invitation to have sex until rape. Harassment can also be in the form of comments / negative treatment based on gender, because basically sexual harassment is gender harassment, namely harassment based on a person's gender, in this case because someone is a woman.⁴

According to the Draft Law on the Elimination of Sexual Violence, the notion of sexual violence is any act that violates a person's dignity based on gender discrimination that targets one's body and

³ Andhika Giri Persada, Nimas Putri Dyah Ayuningtyas. "Pencegahan Pelecehan dan Kekerasan Seksual Pada Anak-Anak di SD Gejayan. Jurnal Inovasi dan Kewirausahaan Vol 4, no. 3. (2015)., p.212.

⁴ Meni Handayani. "Pencegahan Kasus Kekerasan Seksual Pada Anak Melalui Komunikasi Pribadi Antar Pribadi Orangtua dan Anak. Jurnal Ilmiah VISI PGTK PAUD dan DIKMAS Vol 12. No. 1 (2017)., p.71

sexuality, which results in or can result in physical, psychological, economic, sexual, political, and / social victim.⁵

III. TYPE OF SEXUAL VIOLENCE

Sexual violence is a type of persecution which is usually divided into two categories based on the identity of the perpetrator, namely:

a. Familial Abuse

Familial abuse is incest, namely sexual violence where between the victim and the perpetrator is still in a blood relationship, becomes part of the nuclear family. In this case includes someone who is a substitute for a parent, for example a stepfather, or a lover, caregiver or person who is trusted to care for children. Mayer (Tower, 2002) mentions incest categories in families and links them to child abuse, namely the first category, sexual molestation, this includes the interaction of noncoitus, petting, fondling, exhibitionism, and voyeurism, all things related to stimulating offenders sexually. The second category, rape (sexual assault), in the form of oral or relationship with the genitals, masturbation, oral stimulation of the penis (fellatio), and oral stimulation of the clitoris (cunnilingus). The most fatal final category is called forcible rape, which includes sexual contact. Fear, violence and threats become difficult for victims. Mayer said that there were at most the last two categories which caused the heaviest trauma for children, but previous victims did not say about that.

b. Extra Familial Abuse

Sexual violence is violence committed by another person outside the victim's family. In the pattern of sexual abuse outside the family, the perpetrator is usually an adult who is known by the child and has established a relationship with the child, then persuades the child into a situation where sexual harassment is carried out, often by providing certain rewards that the child does not get at his house. The child usually stays silent because if it is known they are afraid of triggering anger from their parents. In addition, some parents sometimes don't care about where and with whom their children spend their time. Children who often miss school tend to be vulnerable to experience this case and must be aware of.⁶

⁵ Bill of draft of the Elimination of Sexual Violence, Rancangan Undang-Undang tentang Penghapusan Kekerasan Seksual

⁶ Ivo Noviana. "Kekerasan Seksual Terhadap Anak: Dampak dan Penanganannya". *Sosio Informa* Vol 01, no. 1. (2015)., p.16.

According to Resna and Darmawan (in Huraerah, 2006), acts of sexual violence can be divided into three categories, namely: Rape, Incest and Exploitation.

a. Rape

The perpetrators of rape are usually men. Rape occurs at a time when the offender first threatens to show his strength to the child. If rape is carried out by violence against children, it will be the greatest risk because persecution often results in unstable emotions.

b. Incest

Described as the occurrence of sexual relations between individuals related to blood. More broadly, namely explaining the stepfather's sexual relationship with stepchildren, between stepbrothers. Even though these last two sexual relations were not intertwined with individuals who were related to blood. Incest is a prohibited act for almost every cultural environment. Incest usually occurs for a long time and often involves a conditioned process.

c. Exploitation

Sexual exploitation includes prostitution and pornography. Often involving a group participating, it can occur as a family or outside the home with some adults and is not related to children and is a sexual environment. In some cases including families, the entire family of the father, mother and children can be involved. This is a pathology situation where both parents often engage in sexual activities with their children and use children as prostitution or for pornography. Exploitation of children requires serious intervention and treatment.⁷

IV. CAUSES OF SEXUAL VIOLENCE

There are several causes of the occurrence of sexual crime behavior in children. *First*, uncontrolled pornography. Sophistication and increasingly cheap variety of gadgeted makes it easy for anyone to get as much pornographic content as possible. Not just any pornography, but pornographic content that is increasingly brutal and the impact can be guessed, perpetrators become porn addicts and eventually seek outlet. Including making small children as sexual objects. The victim who is

⁷ Abu Huraerah, *Kekerasan Terhadap Anak* (Bandung: Penerbit Nuansa, 2006)

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most easily targeted is a small child. They are easily persuaded, threatened, or killed all at once. *Second*, sexual stimulation is not only from pornographic content but from the appearance of many women who like to wear minimal and tight clothing, normal adult men will be aroused and some of them will seek release of their sexual desires. Again, the easiest victims to target are children. *Third*, the negligence of parents provides minimal clothing to girls. Many girls are dressed in tanktops, mini skirts, and so on.

This creates a temptation for pedophiles to target them. Parents should provide reasonable clothes, better still cover their genitals to children, whether male or female, even though they have not been tall, mature. Embedding shame must be instilled in children from an early age. For example, they must understand not to get used to even though they are still small, naked in front of others, when they come out of the bathroom, change clothes, and so on. To the girls also implanted since childhood to wear Muslim women. Closing aurat is conveyed as part of the Shari'a law that must be obeyed both for men and women like QS. al-Nur [24]: 31, QS. al-Ahzab [33]: 59 and some hadiths concerning the obligation to close the genitals and how to dress. *Fourth*, parents are careless in supervising the child's social environment, especially for children whose parents both work. Parents do not provide children with ethical relationships, even though they are still children, parents should teach shame if their genitals are seen, taught where to open their clothes, prohibit kissing and kissing the opposite sex, including courage to tell stories when there are people who dare to hold their sex organs. *Fifth*, children are not equipped with knowledge and skills that can protect themselves from the threat of sexual crime.⁸

V. IMPACT OF SEXUAL VIOLENCE

Currently there are many sexual violence in children as reported in the media. The impact of sexual violence on child victims does not only have an impact on the physical but also on the child's psychic. Hereby the need to be studied further about the impact of sexual violence on children Sexual violence is a form of sexual contact or other forms that are not sexually desirable. Sexual violence is usually accompanied by psychological or physical pressure.⁹

⁸ Siti Hikmah. "Mengantisipasi Kejahatan Seksual Terhadap Anak Melalui Pembelajaran; Aku Anak Berani Melindungi Diri Sendiri": Studi di Yayasan al-Hikmah Grobogan. *Sawwa* Vol 12, no. 2 (2017), pp.192-193.

⁹ Margaret W. Matlin, *The Psychology of Women*, Sixth Edition (USA: Thomson, 2008)

The impact on victims of sexual violence is not only a physical impact but a psychological impact. Physically it is possible that there is nothing to be questioned about children who are victims of sexual violence, but psychologically it can cause addiction, trauma, revenge and others. What happens to them will affect the maturity and independence of the child's life in the future, the way he sees the world and his future in general¹⁰

Sexual violence against children will have an impact or effect that is not mild to the child as a victim. Most rape victims experience a psychological disorder called post-traumatic stress disorder (PTSD) whose symptoms are intense fear, high anxiety, and post-event latrine emotions.¹¹ Browne initiated four types of trauma effects due to the first sexual violence, Betrayal. second, Traumatic Sexualization Russel¹² found that women who experienced sexual violence tended to reject sexual relations, and as a consequence became victims of sexual violence in the household. Finkelhor noted that victims prefer same-sex couples because they think men cannot be trusted. third, Powerlessness, fourth, Stigma (Stigmatization) Victims of sexual violence feel guilty, ashamed, have a bad self-image. Guilt and shame are formed due to helplessness and feel that they do not have the power to control themselves. Victims often feel different from other people, and some victims get angry with their bodies for the persecution they experience. Other victims use drugs and alcoholic beverages to punish their bodies, blunt their senses, or try to avoid the memory of the incident. Children who experience sexual violence can feel the social effects of sexual violence, one of which is sexual violence. The emergence of social anxiety over what he is facing makes him develop inferiority or inferiority complex to manipulate behavior in his social environment. His anxiety is covered by withdrawal from the environment, there is an individual's reluctance to interact with the social. The avoidance of this social environment was realized by often not going to school without reason. Withdrawal in a social environment is a way of self-protection developed by individuals.¹³

The impact of the violence experienced can be seen from the aspect of resilience. From within the subject, he feels disliked by those

¹⁰ Cempaka Putrie Dimala "Dinamika Psikologis Korban Kekerasan pada Anak Laki-Laki" *Psychopedia Jurnal Psikologi Universitas Buana Perjuangan Karawang* Vol 1, No 2 (2016)., pp.70

¹¹ Kurniawati, M. (2013). *Studi Kualitatif Kekerasan Seksual pada Anak di Kabupaten Pidie Tahun 2013*. Medan: Universitas Sumatera Utara.

¹² Allyn & Bacon. Tower, C. *Understanding Child Abuse and Neglect*. Boston:, A Pearson Education Company, 2002

¹³ Probosiwi Ratih dan Bahransyaf Daud "Pedophilia and Sexual Violence: Problems and Child Protection" *Sosio Informa Vol. 01, No. 1, Tahun 2015.*, pp.33-35.

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around him, feels worthless, feels that no one cares, is not confident, but still believes that everything will end well. This expectation can certainly be a capital for the subject to survive and have a position in his work.¹⁴

More ironically the other effects of physical violence and sexual abuse that children receive are that they can grow into apathetic individuals later.¹⁵ In addition, the impact of victims of sexual violence that occur when early childhood has more complex impacts such as sexual disorders, high depression, repeated suicide attempts and it is very likely that he will take action in his childhood or become a perpetrator of violence and harassment itself.¹⁶

Meanwhile, Weber and Smith (2010) reveal long-term impacts sexual violence against children, namely children who are victims of sexual violence on childhood has the potential to become perpetrators of sexual violence later day. Victim helplessness when facing acts of sexual violence in childhood, unwittingly generalized in their perception that action or behavior sex can be done to weak figures or helpless.¹⁷

Sexual violence tends to cause traumatic impact both on children and adults, but this case is often not revealed due to denial sexual violence incident. We can see in some cases, child victims tend to cover their events natural for various reasons, among others embarrassed or afraid of the perpetrator. There is the tendency of negative emotions to emerge sexual violence for example conditions are not empowered and tortured when expressing sexual harassment event even on some cases of physical impact such as shaking, muscle spasms, and headaches are encountered victims of sexual violence.¹⁸

VI. CHILD DEFINITION

The definition of the concept of children in the concept of Indonesian law is available in various regulations. In the past, the age of children in the Civil Code (Burgerlijk Weboek Van Indonesie) Staatsblad 1847-23. Definition of children, especially those responsible for the provisions of

¹⁴ Hyu Sisc, Clara Moningka "Resilensi Perempuan Dewasa Muda yang Pernah Mengalami Kekerasan Seksual Di Masa Kanak-Kanak" Jurnal Psikologi Volume 2, No. 1, Desember 2008., p.64.

¹⁵ Risty Justicia "Program Underwear Rules Untuk Mencegah Kekerasan Seksual pada Anak Usia Dini" Jurnal Pendidikan Usia Dini Vol , Edisi 2, (2011)., p.222.

¹⁶ Corona, Jannini, Maggi, Giovanni, Emmanuele, Mario. Physical And Sexual Abuse (Impact in Children and Social Minorities). Switzerland : Springer International Publishing, 2014

¹⁷ Mark Reese Weber, Smith, Dana M. "Outcomes of Child Sexual Abuse as Predictors of later Sexual Victimization". Journal of International Violence 26.9 (2011): 1899-1905.

¹⁸ Probosiwi Ratih dan Bahransyaf Daud. *Op.Cit.*, p.32.

Article 330 B. W, which defines as follows: Those who are immature are those who have not reached even twenty-one years of age and are not married before. If the marriage is dissolved before they are used for 21 years, then they do not return to immature status. Those who are immature and not under the control of parents.¹⁹

Definition of children in the context of Indonesian labor law is available in the provisions of Article 1 number 31 of the Republic of Indonesia Law Number 13 of 2003 concerning Manpower, children are defined as persons under 18 (eighteen) years old.²⁰

According to the applicable human rights law, children's rights are even effective since the child is in the womb. This is confirmed through Article 53 paragraph (1) of Law No. 39 of 1999 which states that every child from the womb has the right to live, maintain life and improve his standard of living. When the child is born, the child has the right to be treated as well as possible for the child's best interests from his parents. Article 57 paragraph (1) Law No. 39 of 1999 stipulates that every child has the right to be raised, maintained, cared for, and guided by his parents or guardian's to adulthood in accordance with the provisions of the legislation.²¹

Furthermore, Finkelhor (1999) shows that children from certain groups are more susceptible to sexual abuse than others. They include children from divorced families, children living with stepparents or guardians, children from families who commit violence, physical disabilities such as alcoholism, drugs and mental health problems.²² A study in India also reported that there were several children who were vulnerable to being victims of sexual harassment including street children, children in childcare institutions, children who experienced economic difficulties, stepchildren and poor orphans (Molyneux, et al: 2013) The research can be seen that children who are the object of sexual violence tend to be weaker physically, psychologically, economically and socially compared to the perpetrators, so they tend not to have the ability to oppose or fight the perpetrators²³

¹⁹ Andika Wijaya Ananta dan Wilda Peace Ananta, *Darurat Kejahatan Seksual* (Jakarta: Penerbit Sinar Grafika, 2013).

²⁰ Law No. 31 of 2003 chapter 1 verse (31) about *employment*, Pasal 1 ayat (31) UU No. 13 Tahun 2003 tentang *Ketenagakerjaan*.

²¹ Law no 39 of 1999 chapter 57 verse (1) about *Human Rights* Pasal 57 ayat (1) UU NO. 39 Tahun 1999 tentang *Hak Asasi Manusia*.

²² Rolands Paulauskas. "Sexual Deviance and Child Abuse. *Teacher Education*" Vol. 21 (2013)., Pp.10-23.

²³ Elizabeth M.Molyneux, Neil Kennedy, Asefa Dano, Yabwile Mulambia."Sexual Abuse of Children in Low-income Settings. *Journal Pediatrics and International Child Health*, Vol. 33, (2013)., Pp. 239-246.

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A book entitled "Human Rights, Individual Rights, and Collective Rights" written by Jack Donnelly and quoted by Peter R. Baehr said that human rights are rights because they are human beings.²⁴ Every human being has equal rights with other human beings, because he is human. Human rights are inherent in human beings, individual and autonomous, human rights exist in every human person without intermediary social relations. Therefore human rights are individual: (An isolated human being in principle has human rights)²⁵

Although some experts state the concept of human rights simple to the philosophy of stoika in ancient times through the natural law of Grotius and *Ius naturale* from Roman law. It seems clear that the origin of the concept of modern human rights can be found in the English revolution, the United States and France in the 17th and 18th centuries.²⁶

Human rights have long been a contentious topic and are included in international agendas. The core of the international debate on the issue, in addition to seeking mechanisms to guarantee human rights and prevent violations against them, also instills in the international community the importance of respect for human rights, both for the life of the state and relations between the States. The determination to achieve this goal was proven by the declaration of the UN Charter in 1948 and included the principle of respect for human rights in its Charter as one of its main objectives.²⁷

VII. SEXUAL VIOLENCE AGAINST CHILDREN AS HUMAN RIGHTS VIOLATION

A. Violation of the 1945 Constitution of Indonesia

The 1945 Constitution of the Republic of Indonesia results of amendments (up to the fourth amendment) do not provide age restrictions on the age of children. The formulation in the 1945 Constitution of the Republic of Indonesia has a special meaning to the understanding of the status of a child as a legal subject from a national legal system that must

²⁴ Jan Berting, et al, *Human Rights in a Pluralist World: Individuals and Collectivities* (London: Meckler, 1990), 33.

²⁵ Rhoda E. Howard *HAM* *Penjelajahan Dalih Relativisme Budaya*, terj. Nugraha Katjasungkana (Jakarta: Pusaka Utama Graffiti 2000), 124.

²⁶ Scott Davidson., *Hak Asasi Manusia*, terj. A. Hadyana Pudjaatmaka (Jakarta: Pustaka Utama Graffiti 1994), 2.

²⁷ Bahder Johan Nasution. *Negara Hukum dan Hak Asasi Manusia*. (Bandung: Mandar Maju, 2011).

be protected, maintained and fostered to achieve child welfare. Article 38 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that every child has the right to protection from violence and discrimination.

B. Violation of The Human Rights Law

In Law No.39 of 1999, it was emphasized that the issue of protecting women's rights and children's rights turned out to receive greater attention. UU no. 39 of 1999 has adopted several articles from the convention on women's rights and children's rights into their articles. Indeed, the nature of the protection of human rights is to realize and maintain balance, namely the balance between rights and obligations, and the balance between individual interests and the public interest. The rights of children as part of human rights have been formulated in Article 52 paragraph (2) of Law No.39 of 1999, which reads: human rights are human rights and for the sake of their rights the rights of the child are recognized and protected by law even from the womb.²⁸

C. Violation of The Convention on the Rights of the Child

In the legal protection of children must be in accordance with the Convention on the Rights of the Child as ratified by the Government of the Republic of Indonesia through Presidential Decree No. 36 of 1990 concerning the ratification of the Convention on the Rights of the Child. So it can be said that child sexual violence is a violation of this Convention because the Indonesian Government fully supports this Convention.

Sexual violence against children is a gross violation of human rights that has a negative impact on children and the general public, therefore it is necessary to overcome both national and international levels and the need for legal regulations that can provide deterrent effects for perpetrators of sexual violence against children.

The impact of sexual violence on children is very large, especially for children such as trauma, depression, phobia of sexual relations, injury if there is violence and until moral damage occurs when the child's mindset grows. Countermeasures are not only carried out by regulations and state apparatus but also from the child's own environment such as family and friends and relatives for more effective prevention.

²⁸ Law no. 39 of 1999 chapter 52 verse (1) about *Human Rights*, Pasal 52 ayat (2) UU No. 39 Tahun 1999 tentang *Hak Asasi Manusia*

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