Law Enforcement for Sexual Abuse Committed by Children against Children (Study at Prosecutor Office in Pesisir Selatan District)

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Abstract

Legal substance, legal structure, and legal culture have an important role in realizing total law enforcement in order to create social welfare and justice, certainty, and benefit of law. To establish the total law enforcement, the government has formed various legal policies as a normative basis in tackling crime by imposing either penalty or non-penalty. However, the legal policies do not suppress the number of sexual abuse because of various causes. Based on the problem above, it is interesting to study especially related to the form of law enforcement for the sexual abuse and regarding the efforts to deal with the sexual abuse.

Keywords: Law Enforcement; Sexual Abuse; Children as Victims; Children as Perpetrators

Introduction

Indonesia has setup Pancasila as a fundamental norm upholding dignified human values as stated in the second principle of Pancasila. The existence of this second principle undertakens the creation of fair and civilized human values. Pancasilais the basic to avoid the clash of human right.

Hobbes states that every human being naturally has lust driving his actions. This lust is like the reluctance to live a miserable life, desire for power and wealth, etc. He analogizes human beings as watches, whichthey can move and work because they are mechanical devices. Then, he started to think that the drive of human beings is their own lust. The most powerful lust in humans is the desire to defend their selves. It can trigger every human being to commit criminality. In fact, the logic in well or bad behaviour of human being has been psychologically inherent in people’s subconscious.

2 Ibid.
3 Tolib Efendi, Criminology's Basic (Science a Causes Of Crime), Setara Press, Malang, 2017. page. 1.
In essence, crime has become a universal phenomenon. Sahetapy argues that crime is a set of human being’s problems. He also puts forward an aphorism “crime is eternal—as eternal as society”.\(^4\) It means that there is no society without crime.\(^5\) Reflecting on the aphorism, it can be concluded that crime is be able to develop in accordance with the progress of civilization.\(^6\)

Criminal law is a mean that has a role to provide penalties for perpetrators in order to create the justice, expediency, and legal certainty which contain both preventive and repressive systems. Thus, criminal law must be able to reduce the number of crime committed by either adults or children.

According to Susanto, the chief of Indonesian Child Protection Commission, there were 233 cases of sexual violence against children in 2018.\(^7\) While, at the Prosecutor Office in Pesisir Selatan, a number of sexual abuse are recorded 22 cases in 2016, 27 cases in 2017, and 29 cases in 2018.\(^8\)

Total enforcement is the scope of criminal law enforcement as formulated by substantive law of crime.\(^9\) Based on the subject, law enforcement is extensively a process of law enforcement that involves all legal subjects in every legal relationship. Anyone who runs a normative rule or does something or does not do something by basing himself on the norms of the law means he runs or enforces the rule of law.\(^10\) So, it can be interpreted that the process of total enforcement for sexual abuse is actualized when all levels of society participate in carrying out the activities in order to achieve the purpose of establishing a criminal law policy.

The issue of law enforcement is closely related to crime prevention and handling.\(^11\) According to Arief, policy or effort to prevent and deal with crime is the criminal policy.\(^12\) The criminal policy cannot be separated from efforts to realize the social welfare policy and to provide social defense policy.

The effort in tackling the crime by imposing criminal penalties or sanctions as a form of law enforcement is conventional method.\(^13\) However, this conventional method is still used in tackling the crime. The example is an attempt to enforce the law on the sexual abuse committed by children. Simply, the government applies the repressive system by providing criminal sanctions for such a criminality. In fact, it is not able to reduce the number of this sexual abuse. Therefore, to tackle such a criminality, it requires an immediate assistance of the society.

Lack of the society’s awareness is one of the factors causing the lack of law enforcement for the sexual abuse. In other words, a legal policy is required to increase an attempt of law enforcement on the sexual crime committed by children against children. Because the legal policy can create the total enforcement that accomplishes the protection of children and ensures the fulfillment of children’s rights in accordance with their duties and responsibilities, as the purpose of Act of the Republic of Indonesia number 23 of 2002 concerning child protection as amended to Act number 35 of 2014 and Act number 17 of 2016.

\(^4\) J.E Sahetapy, Because of Crime, Law Faculty Airlangga University, Surabaya, 1979, page 1.
\(^6\) Ibid. page 2.
\(^8\) Register of Criminal Case at the Pesisir Selatan Prosecutor’s Office in 2016-2018.
\(^9\) Ibid.
\(^10\) Ibid. page 33.
\(^13\) Ibid. page 28.
Research Method

This research used empirical legal research aiming at investigating the role of legal policies at the society and the reality in the midst of society. The empirical legal research is defined as a research concerning with the real or factual situation occuring in the society. The process of this research was done systematically. It was started at collecting the data, identification of the problem, and then the problem solving. In collecting the data, this research employed the library research as well as the empirical and sociological legal research for interview. The main focus of this research is the law enforcement for the sexual abuse which is increasing in every year at the Prosecutor Office in Pesisir Selatan District. This study would like to seek the causes of increasing sexual abuse committed by children against children and how the law enforcement at Prosecutor Office in Pesisir Selatan District tackles this case.

The interview of this research was done by direct interaction between the interviewer and the respondents. The interviewer asked some questions that has been planned and relevant to the research problem. It was used to get the accurate information from the respondents. The interview aimed to obtain some information in order to achieve the objectives of this research.

Result and Discussion

1. The Law Enforcement for Sexual Abuse at the Prosecutor's Office in Pesisir Selatan District

Basically, the law enforcement is an activity implementing legal policies for the sake of creating social welfare and justice, certainty, and benefit of law. The law enforcement influences several factors such as the law, upholder of law, society, legal cultural factors, etc. These factors can affect the success of activities to trigger and rouse values or norms of the society. The activities of the law enforcement aiming at triggering the norms of the society are a concept of total law enforcement. In addition, in executing the law enforcement, there are procedural legal rules that limit the law enforcement to avoid abuse of power from the components of legal structure.

In Indonesia, there is a legal structure that has an obligation to carry out the law enforcement such as the police, prosecutor, judiciary, and correctional institution. Through the attributive delegation of authority from legislation, the legal structure either the police, prosecutor, or judiciary has an obligation to guarantee the creation of justice, legal certainty, and the benefit of law. Besides, the legal structure is expected to provide the security and prosperity to the society.

Classically, the duty of the police, prosecutor, and judiciary, which are components of the criminal justice system, is to impose punishment to the criminals. It’s aim is to provide a deterrent effect to the criminals and propose a threat to the public in order to prevent a crime. In the mechanism of the criminal justice system, the prosecutor functioning as the public claimant submits an indictment to the judicial judges. This indictment is proven by presenting witnesses, showing evidences, and presenting defendant for investigation. It is a form of law enforcement aimed at providing conviction to the defendant, which is expected to provide a deterrent effect so that the defendant prevent the crime.

15 Ibid. Page. 16.
In the practice of the Criminal Justice System for Children, the prosecutor office is as an institution that has the authority to prosecute criminals based on the Criminal Procedure Code and Law number 16 of 2004 concerning the Prosecutor Office of the Republic of Indonesia. Those two rules have to be paired up with the rules of Act number 35 of 2014 and Act number 17 of 2016 concerning Child Protection which contains criminal sanctions for sexual abuse as well as with Act number 11 of 2012 concerning the Criminal Justice System for Children when prosecuting the criminals of sexual abuse. It means that in the pre-prosecution up to the prosecution stage, the police and prosecutor office as the authorized institutions are obliged to obey and carry out the provisions of Law number 11 of 2012 concerning the Criminal Justice System for Children. For example, the period of detention given by investigator to a perpetrator of sexual abuse is 7 days and it can be 8 days by the public prosecutor, 5 days by the public prosecutor and it can be 5 days by a court judge, and 10 days given by judge and it can 15 days by the Chief Justice.

If the judge has issued a decision of criminal sanctions to the perpetrators, the prosecutor as an executor executes them to the Correction Institution for Children. However, this institution in Pesisir Selatan has not existed so that the prosecutor has to execute the perpetrators to the prison in Painan, then they are transferred to the Correction Institution for Children. Actually, granting the man criminal sanction is the last attempt because the judge’s decision is as a criminogenic factor, which means that a determinant of whether or not the number of sexual abuse is reduced. This decision is also given as a form of protection for the children as victims. According to Ferryandi as a Child Judge at the Court in Painan, the sexual abuse keeps increasing every year. Therefore, the children committed the sexual abuse must be convicted as a considerable effort in enforcing the law without ignoring the principle of restorative justice as the most crucial aspect protected is the society. The provision of criminal sanctions such as imprisonment is only used as a last attempt in carrying out the law enforcement for sexual abuse based on Article 81 Paragraph (5) of Law Number 11 of 2012 concerning the Criminal Justice System for Children. So that, the effort of law enforcement with concentrating on restorative justice are highly emphasized in Law Number 11 of 2012 concerning the Criminal Justice System for Children.

The approach of restorative justice promulgated in Law Number 11 of 2012 concerning the Criminal Justice System for Children emphasizes diversion program in carrying out the law enforcement on children. Conversely, the problem related to the threshold of this diversion is still problematic occurring ambiguity for the law enforcement agencies to accomplish the law enforcement for this sexual abuse. It is because Article 7 of Law Number 11 of 2012 concerning the Criminal Justice System for Children only requires the Investigator, Public Prosecutor, and Judge to undertake the diversion on the sexual abuse under threat of seven years. Where as, in Article 76 D of Law Number 35 of 2014 and Article 81 of Law Number 17 of 2016, the threat to the children as criminals in this case is at least 5 years up to a maximum of 15 years.

However, the Law Number 11 of 2012 does not state the threshold for criminal threats either a minimum or maximum penalty. If the threshold can be diversified and considered from the minimum threat, the diversion must be carried out based on Article 76 D and Article 81 of Law Number 35 of 2014 as well as Law Number 11 of 2012. On the other hand, if the threshold can be diversified and viewed of the maximum threat, the diversion program can be applied. It is a weakness of the legal substance of the Criminal Justice System for Children, which must be immediately addressed by the legislators in forming criminal law policies in order to provide protection against children either as perpetrators or victims. In this current practice, the law enforcement officials have never applied the diversion instead of the judicial process based on the mechanism of the Criminal Justice System for Children in Law Number 11 of 2012.

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Based on the data of the service center for the protection of women and children, the number of sexual abuse is quite higher every year than other crimes committed by children such as theft. Moreover, the results from the interview asked to the Head of Prosecutor Office in Pesisir Selatan showed that the sexual abuse have increased. It indicated that the goal of criminal punishment by imposing the imprisonment to children as perpetrators does not get the maximum results as it could not reduce the number of this sexual abuse in Pesisir Selatan District.

Besides, another factor causing the sexual abuse is the society’s judgement. Most of the society have assumed that if the sexual abuse is committed with an interpersonal affection, it is not counted as sexual assault but deviance. Also, they do not grasp the provisions of the legal rule. In fact, although the sexual abuse is started by a female, the perpetrator is still be convicted according to the Law of Child Protection. In the law of crime, every criminal is proven committing the crime either adult or child, he is imposed with criminal sanctions. The judgement of and lack understanding of the society as well as lack of socialization about the legal regulations to the society make the law enforcement for the sexual abuse at the Prosecutor Office in Pesisir Selatan obstructed.

2. The Efforts to Overcome the Sexual Abuse at the Prosecutor Office in Pesisir Selatan

Basically, the law enforcement is a step to realize the legal policy aiming at creating justice, certainty, and the benefit of law for the society. The sexual abuse is contrary to the norms of society. Coping with the sexual abuse requires not only the legal policy but also is followed by an action to make the policy happen. The government, one of the elements of the legal structure in Indonesia, has formed various forms of the legal policy which are elements of legal substance in order to tackle the sexual abuse. The form of the legal policy refers to the formation of Law Number 23 of 2002 as amended to Law Number 35 of 2014 and amended to the Government Regulation on Law Number 1 of 2016 stipulated to be Law Number 17 of 2016 regulating the children protection.

The Article 76 D of Law Number 35 of 2014 and Article 81 of Law Number 17 of 2016 concerning the Establishment of the Government Regulation Number 1 of 2016 concerning the Second Amendment on Law Number 23 of 2002 concerning the Children Protection into the law, has given sanctions severe to anyone who commits the sexual abuse. This is a repressive effort carried out by the government as a form of law enforcement for the sexual abuse. However, the effectiveness of the law on Child Protection has not yet been significant because the modus operandi against the sexual abuse is increasingly developing.

The sexual offence against children is not only committed by adults but also by children. The sexual offence committed by children is called as sexual abuse. The case increasingly occurs at the Prosecutor Office in Pesisir Selatan District. Based on the observation, it is due to various factors, Such as:19

a. The influence of technology (watching pornography)

b. The social factors

c. The legal culture of the people who have no knowledge of the law.

d. Lack of parental supervision.

Regarding the lack of parental supervision, people of Pesisir Selatan District generally work as farmers and fishermans. They started to work from early morning to dusk. It means that the interaction between parents and their children is relatively short. Based on some cases that have been handled, it is found that the parent of children as victims of sexual abuse just give some money to their children without asking their children’s condition such as their education or their association. It is not amazed if most of children seeks for another affection because they do not get some affection from their parent. In this case, emotional maturity of an immature female causes her to be easily persuaded by her boyfriend’s seduction because the female does not understand the consequence arising if having intercourse would impose the criminal punishment.

In addition, one of the main factors causing the sexual abuse especially at Prosecutor Office in Pesisir Selatan District is the legal culture that develops in the society. People without having knowledge on the law concerning the sexual abuse often get reluctant to report the occurrence of the sexual abuse that often occur between their daughter and boyfriend of their daughter. This hesitation is often influenced by an assumption of the society that if the sexual activity is carried out on the basis of mutual interest, the children is not punished then and there is no need for legal action. Such a case is often resolved by marrying the daughter to her boyfriend. This pattern is then followed by the others and grow up as a culture of the society. As a result, such action encourages children to commit the sexual abuse against the other children as they might think that they are not be punished.

Casuistically, counter measures that must be done are by changing the mindset of the society regarding law and punishment. To influence the mindset and view of the public regarding the sexual abuse and crime, the government has made various policies that will be implemented to influence the views of the community. One example of efforts to deal with such a case is by setting a program of Jaksa Masuk Sekolah (Prosecutor Goes to School). This program becomes a part of the counseling and legal activities of Prosecutor Office of the Republic of Indonesia based on the Letter of Intelligence of the Junior Attorney General Number:B-81/D/L.2/01/2016 in January 16, 2016 concerning the Program of Attorney Entering School. In this program, the Prosecutor Office of the Republic of Indonesia provides various forms of legal counseling in general including legal counseling activities regarding the sexual abuse and its impacts. This program is expected to be able to provide early knowledge to the children regarding law and punishment. Also, it can be a preventive process to influence the children’s mindset regarding the sexual abuse along with its legal consequences.

In addition to the provision of the aforesaid program, another effort taken to change the society’s views on the law and punishment is the establishment of the Integrated Service Center for the Protection of Women and Children in Pesisir Selatan District. The Institute of the Protection for Children and Women is an institute focusing on the socialization of juvenile delinquency, including the sexual abuse. This institute in Pesisir Selatan District collaborates with Bundo Kanduang, the Community Leaders, the Law Enforcement Apparatus, and the Protection of Women and Children agents in each sub-district to provide protection for children and prevent the sexual abuse.

With regard to the sexual abuse, the Institute of Protection for Children and Women provides assistance to children in conflict with the law using a restorative justice approach, in accordance with Law number 11 of 2012 concerning the Justice System for Children. This Institute of Pesisir Selatan District usually bring together children as perpetrators with children as victims of the sexual abuse, along with the families and parents of the children to make offers to each party in peace. If an agreement is not reached, then the problem will be resolved through the law. Whereas, for children as victims of sexual abuse, the

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Institute of Protection for Children and Women in Pesisir Selatan District seeks to restore the mental condition of children through psychological counseling conducted by psychologists who work together with the Protection Institute of Pesisir Selatan District.

The following is the recapitulation on the violence against children in Pesisir Selatan District in 2017 and 2018 provided by The Institute of Protection for Children and Women:

<table>
<thead>
<tr>
<th>No</th>
<th>Year</th>
<th>Total of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>2017</td>
<td>78</td>
</tr>
<tr>
<td>2.</td>
<td>2018</td>
<td>85</td>
</tr>
</tbody>
</table>

**The Recapitulation Table of the Sexual Abuse in Pesisir Selatan Regency**

In the table above, it can be seen that the sexual abuse in 2017 and in 2018 kept increasing. However, the data given by Protection Institution consisted of all forms of violence against children and were not specific to the sexual abuse. The number of cases on the sexual abuse can be seen from the data provided by Prosecutor Office in Pesisir Selatan presented as follows:

<table>
<thead>
<tr>
<th>No</th>
<th>Year</th>
<th>Total of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>2017</td>
<td>27</td>
</tr>
<tr>
<td>2.</td>
<td>2018</td>
<td>29</td>
</tr>
</tbody>
</table>

**The Recapitulation Table of the Sexual Abuse at the Prosecutor Office of Pesisir Selatan District**

Viewed from the table above, there is an increase in cases of sexual abuse at the Prosecutor Office of Pesisir Selatan District. From both the recapitulation data given, it can be concluded that the cases of sexual abuse continue to increase even though it did not happen with a significant number.

The problem occurring is that the Social Service through the Institute of Protection for Children and Women only protects the children and provides the legal assistance to children who are in conflict with the law, if there have been reports or complaints. The Institute of Assistance and Guidance for Children in each district does not work optimally causing the society to report by themselves. Whereas, the task force of Assistance and Guidance Institute is the spearhead of the government through the Social Service to protect women and children. This task force is expected to be able to immediately report to the Social Service every act of children on the sexual abuse in each region so that an immediate action to reduce the high rate of the sexual abuse in Pesisir Selatan District can be carried out. In addition, the Prosecutor Office of Pesisir Selatan District, viewed from the perspective of its authority, will only carry out the repressive measures if there has been a Commencement of Investigation Order from the police. This means that authoritatively repressive measures can only be carried out by the Prosecutor Office if the sexual abuse has been reported to the police as a general criminal investigator. Therefore, it can be concluded that the most effective effort made to deter the sexual abuse is by the preventive measures. The government through the Protection institution that has the main duty to carry out preventive protection must be more active in providing protection for children, especially children as victims of the sexual abuse.

Another thing that becomes an obstacle in overcoming the sexual abuse at the Prosecutor Office of Pesisir Selatan District is the socialization activities carried out by Pesisir Selatan Social Service towards the society which were only done as much as three times in a year due to budget limitations. Given the geographical conditions of Pesisir Selatan District which is so wide and the legal culture of the people, the problem significantly affects the society in gaining the maximum knowledge on the law.
Beside the institutions in the government, the efforts to deal with the sexual abuse require community participation. This means that not only law enforcement officials and government agencies have the obligation to overcome the sexual abuse, but the society is also expected to play an active role. Based on Article 93 of Law Number 11 Year 2012 Concerning the Justice System for Children, the society can participate in the protection of children ranging from prevention to social reintegration of children by:

a. Reporting the offence on children’s rights to the authorities.
b. Making proposals regarding the formulation of policies relating to children.
c. Conducting research and education about children.
d. Participating in the resolution of child cases through Diversion and Restorative Justice approaches.
e. Contributing to the rehabilitation and social reintegration of children, Children as victims and/or children as witness through community organizations.
f. Monitoring the performance of law enforcement officers in handling child cases.
g. Disseminating information on children’s rights and the laws and regulations relating to children

However, some provisions contained in Law Number 11 Year 2012 regarding the Criminal Justice System for Children are not carried out by communities at the Prosecutor Office of the Pesisir Selatan. That is because the lack of knowledge possessed by the society and the stigma of society that are afraid of law enforcement officials. This makes people reluctant to coordinate with law enforcement officials related to child protection. The society often views that if an offence occurs, the society’s task is only to report the incident to the law enforcement officials. The society does not understand that the community and families who come in direct contact with children, have a strategic role in protecting children particularly by providing education to children.

The measures to deal with the sexual abuse are very important by the society because family and society are parties that come into direct contact with children. The society should be able to protect the children by instilling the values that develop in the society and provide education on the impact of sexual abuse. If all elements carry out their duties and functions optimally, then they will have a great influence on and will be able to change the mindset of the society who is originally legally illiterate to become familiar with the laws. Moreover, all norms in society can be enforced and may prevent the children, either as the preparators or the victims, from committing the sexual abuse along with the legal consequences.

Conclusion

After the research on Law Enforcement for Sexual Abuse (a study at the Prosecutor Office in Pesisir Selatan District) was carried out, it can be concluded as follows:

1. In practice, the law enforcement for the sexual abuse at the Prosecutor Office in Pesisir Selatan District is not conducted effectively due to the lack of society’s knowledge on law and punishment. In addition, there is a problem in Law Number 11 of 2012 concerning the Justice System for Children related to the threshold of the punishment which can be diversified causing weak authority
from the law enforcement officials in conducting law enforcement for the sexual abuse. It is a problem since Law Number 11 of 2012 concerning the Justice System for Children emphasizes the law enforcement action by paying attention to restorative justice. As the cases of this sexual abuse within the Prosecutor Office in Pesisir Selatan District keep increasing every year, the child as the perpetrator should remain charged. This is a form of serious legal action taken against child on the sexual abuse which is done without ignoring the principle of restorative justice. It is important to be carried out since there is more important matter that must be protected, namely the society.

2. The efforts to deal with the sexual abuse at the Prosecutor Office in Pesisir Selatan District have been carried out by the local government institutions through several activities such as Jaksa Masuk Sekolah (Prosecutor Goes to Schools) conducted by Prosecutor Office of Pesisir Selatan District, legal counseling activities by Social Service of Pesisir Selatan District which involved the Institute of the Protection for Children and Women), and raising society’s awareness on the law and punishments by law enforcement officers of Pesisir Selatan District. However, these activities are still not optimally carried out for several reasons. The number of activities were only conducted a few times in a year due to the budget constraints. Moreover, the protection program of the Pesisir Selatan District does not effectively work out because the Institute of Assistance and Guidance for Children in each sub-district does not carry out its functions optimally. Therefore, the reports on the sexual abuse received by the Social Service of Pesisir Selatan often come from the local society instead of from the Institute of Assistance and Guidance for Children. This problem poses the challenge for the Social Service in formulating the policies that can solve the cases of the sexual abuse.

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