

# Optimization of Law Enforcement of Criminal Acts of Obscenity Against Children

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## ABSTRACT

This research aims to analyze the Optimization of Law Enforcement of Criminal Acts of Obscenity Against Children in the Legal Area of the Tana Toraja District Attorney's Office in Rantepao. The research method is juridical-empirical legal research. The results of the research are that the process of implementing law enforcement against the criminal act of child abuse committed by the Tana Toraja district attorney in rantepao is by the duties and powers of the Attorney General's Office, that the prosecutor's office has the following duties and authorities: Carry out prosecutions, Carry out judge decisions and court decisions that have obtained permanent legal force, Supervise the implementation of conditional criminal decisions, criminal supervision decisions, and parole decisions and Conduct investigations of certain criminal acts based on law. Factors that influence the investigation of the crime of persecution include Internal Factors, namely Adequate Law Substance, Instructions from superiors, Factors of investigators, Facility Factors and External Factors, namely the cost of a post mortem which is relatively expensive, Constraints in limited time, Support from Suspect's Legal Counsel, Cultural Factors.

**Keywords:** Law enforcement; Fornication; Child

## ABSTRAK

Tujuan penelitian untuk menganalisis Optimalisasi Penegakan Hukum Tindak Pidana Pencabulan Terhadap Anak Pada Wilayah Hukum Cabang Kejaksaan Negeri Tana Toraja Di Rantepao. Metode penelitian adalah penelitian hukum yuridis-empiris. Hasil penelitian bahwa Proses pelaksanaan penegakan hukum terhadap tindak pidana pencabulan anak yang di lakukan oleh kejaksaan negeri tana toraja di rantepao sesuai dengan tugas dan wewenang Kejaksaan, bahwa kejaksaan mempunyai tugas dan wewenang sebagai berikut: Melakukan penuntutan, Melaksanakan penetapan hakim dan putusan pengadilan yang telah memperoleh kekuatan hukum tetap, Melakukan pengawasan terhadap pelaksanaan putusan pidana bersyarat, putusan pidana pengawasan, dan keputusan lepas bersyarat dan Melakukan penyelidikan terhadap tindak pidana tertentu berdasarkan undang-undang. Faktor-faktor yang mempengaruhi penyidikan terhadap tindak pidana penaniayaan diantaranya adalah Faktor Internal yaitu Substansi Undang-Undang Yang Memadai, Instruksi dari pihak atasan, Faktor petugas penyidik, Faktor Fasilitas dan Faktor Eksternal yaitu Biaya visum yang terbilang mahal, Kendala dalam keterbatasan waktu, Dukungan Dari Panasehat Hukum Tersangka, Faktor Budaya.

**Kata Kunci:** Penegakan Hukum; Pencabulan; Anak

## INTRODUCTION

The presence of a child in the family can add harmony. Children are creatures that need attention and affection. Children are a vulnerable group. They are weak and helpless because they cannot yet complete and develop themselves so that they can carry out their obligations as responsible citizens. (Setiawan, 2020). A happy, loving and appreciative family environment makes it easy for children to get physical and spiritual well-being which will become the basis for their further life development (Maknun, 2017). For this reason, children need to be prepared in construction, and physical and mental development.

Children who are supposed to look at the world with shining eyes and live in peace under the protection and affection of their families, as previously described, suddenly have to be deprived of their basic rights and enter into an exploitative and cruel situation. Where the increasing crime in Indonesia results in the emergence of various kinds of modus operandi in the occurrence of criminal acts. Besides that, the lack of public knowledge about criminal law causes a person to become a victim of a criminal act or a criminal offender (Sidabutar & Suhatrizal, 2018).

The criminal act of sexual abuse of minors, various attempts have been made to eradicate this crime from countries around the world, but these efforts have only succeeded in reducing its intensity and quality (Annisa, 2016), and the perpetrators are usually people who are close to or live close to the victim, such as neighbours, friends, biological fathers, stepfathers, grandfathers, uncles and brothers themselves, molestation is usually also carried out by people who do not have strong faith and have a superficial knowledge of the law.

Efforts to protect children have been discussed for a long time both in Indonesia and in the world, bearing in mind that the problem of child protection is a universal problem that many and often occurs. The frequent discussions regarding child protection issues indicate that there is still no strong legal protection for this nation's next generation (Personal, 2018).

Children are a mandate as well as a gift from God Almighty and must be looked after because they have inherent dignity and rights as part of human beings which must be upheld. Children's rights are part of human rights upheld in the 1945 Constitution and are also clearly contained in Articles 52 to 66 of Law no. 39 of 1999 concerning Human Rights (HAM) (Haling, *et. al*, 2018).

Generally, every nation in the world believes that children are the future of their nation and country which must be nurtured and developed by their dignity and worth as children, but

in reality, helpless children are often used as objects of lust by adults, even in many cases by their parents (Soedarsono, 2013). This fact shows that there are still many nations in the world that do not pay special attention to children. Even though in their helplessness, children need attention and protection from the government, parents and their environment. In guaranteeing justice, certainty and legal benefits for every citizen, the state must protect anyone regarding any issues that intersect with the law, including issues of child protection (Firmansyah, 2018).

Article 1 paragraph (3) of the 1945 Constitution of the Unitary State of the Republic of Indonesia states that "Indonesia is a state based on law". The existence of an Indonesian rule of law requires that the law is always upheld, respected and obeyed by anyone, in line with the purpose of the existence of the law, namely to provide justice, certainty and benefits for every citizen without exception (Zaini, 2020).

Like other nations in the world. The Indonesian nation is obliged to provide the best for children, because both directly and indirectly, children are patrons in future development. Therefore, the process of paying attention from all parties to child growth must be comprehensive to continue the generation of an authoritative and dignified nation so that the aspirations of the nation's struggle are achieved according to the mandate of the 1945 Constitution (Sirait, 2017).

Where perpetrators of criminal acts of obscenity feel that children can be the targets for channelling their sexual desires. This is influenced by the opinion that children are not capable enough to understand that the act is a crime or that children do not dare to refuse the perpetrator's wishes (Lubis, 2017). Sexual abuse committed against children will certainly have an impact on the psychological and other developments of the child. The psychological impact on children will give birth to prolonged trauma which can then give rise to unhealthy attitudes, such as inferiority, excessive fear, disturbed mental development, and ultimately result in mental retardation. This situation may become a bad memory for the child victim of the abuse.

Starting from this understanding, then in Article 2 paragraph (3) and paragraph (4) of Law Number 4 of 1979 Concerning Child Welfare, confirms that the child has the right to care and protection, both during the womb and after he is born, the child has the right to protection of the environment that can harm or inhibit growth reasonably. This is supported by the existence of the Convention on the Rights of the Child by the UN General Assembly on November 20, 1989, in which in the declaration each participating country is obliged to provide the best protection and fulfilment of children's rights.

Based on Law No. 35 of 2014 concerning Child Protection, those who are obliged to protect children are the State, Government, community, family, guardians and social institutions so that they can live, grow, develop and participate optimally by human dignity, and receive protection from violence and discrimination (Djanggih, 2018). However, the problem is that in reality these laws and regulations do not necessarily guarantee the protection of children's rights. Because of the continuous emergence of cases of sexual abuse of children that seem to be endless.

This criminal act of sexual abuse of children needs to receive very serious attention from all groups, especially the active role of law enforcers. Imposing a criminal sentence on the perpetrators of the crime of obscenity certainly cannot be separated from the role of judges, prosecutors and the police as law enforcement officers to achieve peace in people's lives.

## **RESEARCH METHODS**

This type of research is empirical research, namely field research (*Field research*), by collecting data in the field. Based on the problems raised in this study which emphasizes optimizing law enforcement for the criminal act of obscenity against the child of the Tana Toraja District Attorney's Office in Rantepao. This research was conducted in the jurisdiction of the Tanah Toraja District Attorney in Rantepao. The choice of location for this research was based on the existence of legal problems against the community related to cases of criminal acts of sexual abuse of children in the jurisdiction of the Tana Toraja District Attorney in Rantepao.

## **FINDING & DISCUSSION**

### **1. The Process of Implementing Law Enforcement Against the Crime of Child Abuse Committed by the Tana Toraja District Attorney in Rantepao**

The duties and powers of the Attorney in the field of pre-prosecution are regulated in Article 30 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, that the prosecutor's office has the following duties and authorities:

- a. Conduct prosecution;
- b. Carry out the determination of judges and court decisions that have obtained permanent legal force;
- c. Supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and parole decisions;
- d. Conducting investigations into certain criminal acts based on the law;

In the process of solving problems, people often do not know how and what steps to take, especially in the process of handling cases of sexual abuse involving children as victims. Criminal Law itself has been regulated and formulated how to resolve the case. This law is used so that people get legal certainty and avoid arbitrary actions that can be carried out by irresponsible parties.

Actually, in the criminal justice system that deals with children's problems, it is mandatory to prioritize a restorative justice approach. The juvenile criminal justice system includes (a) criminal investigations and prosecutions of children carried out by the provisions of laws and regulations unless otherwise stipulated by this Law; (b) trials of children conducted by courts within the general court environment; (c) guidance, guidance, supervision and or action and or after serving a crime or action.

Procedural provisions in the Criminal Procedure Code also apply in juvenile justice, unless otherwise provided for in this Law. The identity of the child, child victim, and/or child witness must be kept confidential in reporting in print or electronic media. This avoids the negative stigma or embarrassment of perpetrators of child crimes. Identity includes the name of the child, the name of the child victim, the name of the child witness, the name of the parent, address, face and other things that can reveal the identity of the child, child victim and/or child witness.

Several regulations regarding material criminal law that regulate criminal acts of sexual abuse, especially against children, have been regulated in several laws to make the perpetrators of criminal abuse feel a deterrent. As well as being able to protect the rights and obligations of children as victims of sexual abuse in court, bearing in mind that they are part of the successors of the Indonesian nation and state which must always receive definite protection from both law enforcement officials and the surrounding community, which is the place for their daily growth and development.

Legal protection for victims of criminal acts of obscenity should start to pay attention again. This legal protection can be in the form of legal assistance, coaching, and rehabilitation. Which aims to restore the psyche of victims of criminal acts of abuse and protect the rights of victims and compensation experienced by victims of abuse. a crime so that it can be categorized in detail.

A juvenile court by Law no. 3 of 1997 is a court held to deal with crimes, especially for children's cases. In this law, it is not explicitly stated to deal with criminal cases, Article 3 simply states: "Children's court hearings, hereinafter referred to as juvenile courts, have the

duty and authority to examine, decide and resolve child cases as stipulated in this law". However, because the law itself regulates criminal provisions, both formal criminal provisions and material criminal provisions for children, the real purpose and objective of the law are to establish this court for juvenile courts. As referred to above, the Juvenile Court Act is a Lex specialist in the provisions of the Criminal Procedure Code and the Criminal Code. The Juvenile Court Act has regulated its criminal procedural law and also regulates several criminal sanctions against children who are involved in crimes.

The handling of criminal cases against children is of course different from the handling of cases against adults, the handling of these children is special because this has been regulated in separate regulations. Understanding the process of handling child cases certainly has an impact on people's understanding that incidentally, not all people understand the current regulations. So that various judgments arise and result in fatalities in the process of handling cases against these children, especially children in legal conflicts who will receive special treatment some consider children cannot be punished even basically not that far, even though the handling process has been specifically regulated.

a. Process of Investigation and Prosecution of Child Cases

In the process of handling criminal acts, the prosecution is carried out by the Public Prosecutor who is determined based on the Decree of the Attorney General or other officials appointed by the Attorney General. In conducting investigations into child cases, investigators are required to ask for considerations or suggestions from social counsellors after a crime has been reported or complained about, and then the Community Research Center is required to submit social research results no later than 3 days after the investigator's request.

The process that was carried out was as follows, namely, the defendant was detained by: a district court judge from 21 March 2019 to 09 April 2019. Extension of detention and Chairman/Deputy Chair of the District Court from 6 May 2019 to 4 July 2019.

b. Child Examination Process

Investigators, Public Prosecutors, Community Advisors and/or legal aid providers and other officers in examining cases of children, child victims and/or child witnesses do not wear official gowns or attributes (Article 22 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System), then at each level of the child, the examination must be given legal assistance and accompanied by a social counsellor or assistant with the

applicable provisions. Child victims and defendants have the same rights before the law, to obtain justice and avoid arbitrariness in the court process.

Based on this description, apart from the absence of official attributes used in the trial, the difference that appears in the adult and juvenile trials is that the trial system runs closed. Children as victims deserve rights and obligations by the procedures in force in Indonesian law.

This is by the provisions of the 1945 Constitution in Article 27 paragraph 1 which reads that all citizens have the same position before the law and government and are obliged to uphold this law and government without exception.

c. The process of examination at court hearings

Children at the first level are carried out with a single judge, but the Chairperson of the Court examining children's cases with panel judges in cases of crimes punishable by imprisonment of 7 years or more is difficult to prove. Judges examining children's cases in children's trials are declared closed to the public except for reading the verdict.

Then in the trial process (Article 55 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System) the Judge is obliged to order parents/guardians or assistants or other legal aid providers if parents, guardians or assistants are not present, the trial is continued accompanied by advocates or other legal aid providers and or community advisers.

Whereas when examining the victim's child or witness' child, the judge may order the child to be taken out (Article 58 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System). If the child victim or child witness is unable to testify before the court session, the judge may order the child victim or child witness to have their testimony heard outside the court through electronic recording conducted by the social counsellor in the presence of investigators or public prosecutors and advocates or legal aid providers, through remote examinations or teleconferences (Article 58 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System).

The judge, before passing the decision, allows parents/guardians/companions to express things that are beneficial to the child, then when the court decision is read, it is held in a hearing open to the public and the child may not be present.

**2. Factors Faced in Law Enforcement Against the Crime of Child Abuse Committed by the Tana Toraja District Attorney in Rantepao**

Based on the results of the author's interviews with the investigators from the Tana Toraja District Attorney in Rantepao, the authors conclude that the factors that influence the investigation into criminal acts of obscenity include:

### 1. Internal factors

#### a. Adequate Legal Substance

The existence of the substance of the law so far has been able to provide support indirectly because the substance in the law states the authority of investigators, the classification of perpetrators and other things that are considered by investigators to have been able to accommodate all needs in an investigation. Criminal responsibility for perpetrators of sexual abuse is regulated in the Criminal Code (KUHP) starting from articles 289-296 of the Criminal Code which are categorized as crimes against decency. The criminal act of obscenity is not only regulated in the Criminal Code but also regulated in the Law of the Republic of Indonesia Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, namely articles 81 and 82. In this connection, mistakes are a determining factor for the accountability of criminals.

Table 1. Answers of Respondents Regarding the Punishment of Offenders of Child Abuse

| No           | Respondents Answer | Frequency | Percentage  |
|--------------|--------------------|-----------|-------------|
| 1            | Effective          | 7         | 70%         |
| 2            | Less effective     | 3         | 30%         |
| 3            | Ineffective        | 0         | 0%          |
| <b>total</b> |                    | <b>10</b> | <b>100%</b> |

Source: **Primary data after processing, 2020.**

- a. Instructions from superiors, both material and spiritual, are also very helpful for investigators in carrying out their duties. Even though the investigator's duties are carried out based on an oath of office, because it is indeed his obligation and the demands of work professionalism, sometimes he still receives instructions or instructions for solving problems from superiors or leaders or directly in the form of orders. Of course, in this case, the leader is considered more knowledgeable and experienced and more authorized than the subordinates. Thus the instructions from superiors in the form of instructions or orders



have become the impetus for the next process to carry out investigations because after all superior orders are an obligation for subordinates to obey and carry them out.

- b. investigator factor, Prosecutors themselves have various positions and statuses and of course, such a position will place prosecutors in a different role from prosecutors in other scopes of work. This can affect every attitude and action in using the authority it has
- c. Factors of Facilities and Infrastructure or Facilities, Even though the main element that determines much in law enforcement is the human element, the human element will not work properly without being equipped with supporting facilities and infrastructure. The facility itself can be a supporting factor and can also be a factor hindering the investigation process. Facility factors can be a support because of the existence of facilities such as skilled human resources, good organization, adequate equipment, sufficient finances and others that can accelerate the performance of prosecutors in this case as investigators in carrying out investigations at the Tana Toraja District Attorney in Rantepao.

Facilities and infrastructure are supporting factors of several factors that have been described previously. Thus the means/facilities are one of the supporters in the law enforcement process.

The availability of adequate facilities is very helpful in carrying out the duties of law enforcement officers. For example, Polri investigators cannot work properly if they are not equipped with facilities such as vehicles with communication devices and inadequate evidence storage. It often happens that a regulation has been enacted, while the complete supporting facilities are not yet available.

Legal facilities and infrastructure include all hardware (*hardware*), software (*software*), and the brain apparatus (*brainware*) which must support the smooth and continuous functioning of the legal system effectively.

Other facilitation factors are elements that are inherent in human beings who uphold the law and which influence the implementation of their duties, including the element of education that will determine it, as well as elements of professional skills. Prosecutors with low ranks are certainly different from high-ranking prosecutors in terms of knowledge and experience, as well as how to find a way out in the face of obstacles in an investigation. The educational facilities owned by prosecutors must be adequate because it is certain that qualified officers, especially their professional abilities, will act decisively in deciding a case. The prosecutor knew and understood what he had to do. The facilities owned will affect the use of authority

and the selectivity of law enforcement during investigations at the Tana Toraja District Attorney in Rantepao.

## 2. External Factors

### a. The visa fee is quite expensive

In the process of investigation by Polri investigators, proving that the criminal case contained a criminal act of obscenity, using a post mortem. Some of the victims of sexual abuse or their families often refuse to have a vision. Victims of sexual abuse or their families who come from economically disadvantaged families object to the difficult visa fees for them.

### b. Time constraints

In carrying out the investigation the investigator has limited time. In processing files from criminal acts with limited time allotted to reveal these crimes, investigators have difficulty completing the predetermined case files.

Where the period of detention both at the level of investigation, prosecution and examination in district courts, high courts and the Supreme Court, is regulated in Article 24 of the Criminal Procedure Code to Article 29 of the Criminal Procedure Code.

### c. Support from the Suspect's Legal Counsel

In carrying out the investigation, the prosecutor does not only deal with the suspect in the criminal act of sexual abuse but also deals with legal advisers who have the suspect. The existence of this legal adviser depends on the wishes of the suspect, whether the suspect wishes to be accompanied by a legal advisor or not. For prosecutor investigators, it is an obligation to offer suspects the right to be accompanied by legal advisers, by Article 115 of the Criminal Procedure Code. This is to the opinion that states, "The use of legal advisers depends on whether the suspect uses them or not, the National Police must offer whether the suspect needs legal advisers or not".

This must be offered so that the law functions for justice, certainty and benefit. In the practice of administering law in the field, there are times when there is a conflict between legal certainty and justice. Legal certainty is concrete in nature, and tangible, while justice is abstract so when law enforcers only handle a case of applying the law, there are times when the value of justice is not achieved. So when looking at a problem regarding the law at least justice is a top priority. Because the law is not solely seen from the point of view of written law, there are still many rules that live in a society that can regulate people's lives. If the law's goal is just justice, then

the difficulty is because justice is subjective and very dependent on the subjective intrinsic values of each person.

One of the roles of lawyers here is to help suspects express honesty without being complicated to facilitate the investigation process so that investigators will also facilitate a way out of this problem.

a. Cultural Factors

The condition of the community also affected the prosecutor's investigation process in law enforcement against the criminal act of obscenity at the Tana Toraja District Attorney in Rantepao. The community lacked response because some people were afraid to provide the information needed for this.

Culture as a legal system includes the values that underlie applicable law, values are abstract conceptions of what is considered good so that it is followed and what is considered bad is avoided, in the context of cases of obscenity it is difficult to escape and cultural factors so that the resolution ended with unclear who the distributor.

According to the author, it is this cultural context that must be changed and given an ethical legal understanding to the community because it is feared that such cultures can make people who do not know the law or are apathetic towards the law which results in not only harming themselves but also harming others.

To create a positive legal culture that can support people's lives, two components are needed:

1. The government can convince the public that the law that is formed is oriented to society, the people and social justice.
2. Law enforcers in carrying out their duties are non-discriminatory.

If these two things are considered, then of course the community will provide support and at the same time will follow this pattern. Thus, the government creates an educated society so that people understand well and implement the legal rules that have been made late, while at the same time being able to provide advice and opinions to the competent authorities, in making the legal products needed to regulate society. So the community is involved in forming legal products, because how the community is the user of the law.

The legal culture of the community is one of the determining factors regarding the implementation of a legal system because the legal culture is nothing but the overall attitude of the community which will determine how the law should apply in society "*the legal culture provides full for the motor of justice*" (Legal culture is the motor of justice). Therefore, the

legal culture and legal awareness of the community are an inseparable unit, because they are closely related to the implementation of law in society.

## CONCLUSION

1. The process of implementing law enforcement against the crime of child molestation committed by the Tana Toraja district attorney in rantepao is by the duties and powers of the Attorney General's Office, that the prosecutor's office has the following duties and authorities: a. Conduct prosecution; b. Carry out the determination of judges and court decisions that have obtained permanent legal force; c. Supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and parole decisions; d. Conducting investigations into certain criminal acts based on the law.
2. The factors that influence the investigation into the crime of persecution include: **1. Internal factors;** a. Adequate Legal Substance and. Instructions from superiors, b investigator factor, and c. Factors of Facilities and Infrastructure or Facilities. **2. External Factors;** 1. The visa fee is quite expensive, 2. Time constraints, 3. Support from the Suspect's Legal Counsel and 4. Cultural Factors.

## SUGGESTION

1. In the process of handling the criminal act of child abuse in several cases, the identity of the victim appears in the media which results in the victim experiencing mental pressure from the community, here the author hopes for an active role from all parties in keeping the identity of the victim a secret.
2. The need for understanding for the community to have the courage to report all forms of crime that occur around them without fear.

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