

CHILD WITNESS IN INDONESIA CRIMINAL COURTS: EFFORTS TO PROTECT THE LAW IN A HUMANISTIC WAY

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CHILD WITNESS IN INDONESIA CRIMINAL COURTS: EFFORTS TO PROTECT THE LAW IN A HUMANISTIC WAY

Ika Dewi Sartika Saimima¹

Abstract

The position of the Child as a witness to a crime in juvenile criminal justice guarantees that a child witness to a crime needs to be freed from threats, namely all forms of actions that cause consequences, either directly or indirectly, which causes child witnesses to feel afraid regarding the giving of their testimony in a judicial process criminal. Regarding child witnesses in criminal acts of sexual violence, a humanist approach is needed in handling them. Children's statements have evidentiary value for judges that can be used as evidence of instructions, even though it is stated in Article 171 of the Criminal Procedure Code that the testimony of child witnesses is not valuable as legal evidence; however, the information provided can be used as a guide that can strengthen the Judge's conviction. Regarding sexual violence. Another concern is that in undergoing the examination process, a humane approach should be used, creating a family atmosphere so that child witnesses are comfortable answering all questions. The trial shall be held closed to the public during the examination of a child as a Witness and a Child as a Victim. Judges, Public Prosecutors, and Legal Counsels do not wear official attributes.

Keywords: child witnesses, sexual violence, child protection

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Abstrak

Kedudukan anak sebagai saksi tindak pidana dalam peradilan pidana anak, menjamin anak saksi tindak pidana perlu dibebaskan dari bentuk ancaman yakni segala bentuk perbuatan yang menimbulkan akibat, baik langsung maupun tidak langsung, yang mengakibatkan anak saksi merasa takut berkenaan dengan pemberian kesaksiannya dalam suatu proses peradilan pidana. Terkait saksi anak dalam tindak pidana kekerasan seksual, maka dibutuhkan suatu pendekatan humanis dalam penanganannya. Keterangan anak memiliki nilai kekuatan pembuktian bagi hakim yang dapat dijadikan sebagai alat bukti petunjuk, meskipun dalam disebutkan dalam Pasal 171 KUHP bahwa keterangan saksi anak memang tidak bernilai sebagai alat bukti sah, namun demikian keterangan yang diberikan tersebut dapat digunakan sebagai petunjuk yang dapat menguatkan keyakinan hakim tentang adanya tindak pidana kekerasan seksual. Hal yang menjadi perhatian lainnya adalah saksi anak dalam menjalani proses pemeriksaan sebaiknya dilakukan pendekatan yang humanis, menciptakan suasana kekeluargaan agar saksi anak nyaman saat menjawab semua pertanyaan. Pada saat acara pemeriksaan

anak sebagai 21 ksi dan/atau Anak sebagai Korban, maka sidang dilaksanakan tertutup untuk umum. Hakim, Penuntut Umum dan Penasihat Hukum tidak memakai toga atau atribut kedinasan.

Kata kunci: saksi anak, kekerasan seksual, perlindungan anak

Introduction

The phenomenon of sexual violence that occurs in Indonesian children is like an endless iceberg. The issue of sexual violence is an important and complicated issue of all the problems of violence against children. Witness and victim protection agency, in its 2021 report, stated that 234 children applied for protection because they had become victims of violence. The report states 5 that 149 children reported being witnesses of sexual violence victims with a range of junior high and high school education.¹ Meanwhile, the Indonesian Child Protection Commission submitted data showing 5,953 cases of child rights violations in 2021, 859 of which were data on issues of child victims of sexual violence 2021. In its report, the Indonesian Child Protection Commission stated that Teachers and Principals perpetrated 88% of Child Sexual Violence in Schools.² This statement reinforces that in cases of sexual violence against children, an imbalance of power relations is exacerbated because the perpetrator has more control over the victim. Perpetrators who have close relationships with victims of sexual abuse, such as parents and children, uncles and nephews, teachers and students, and community leaders, make children suffer physically, psychologically, and mentally. 15

Cases Sexual abuse of children is one of the most challenging crimes to detect and prosecute, in large part because there are often only two witnesses to violence against children, which is an act of abuse or mistreatment of a child in the form of physical, emotional, sexual harm, neglect of parenting and exploitation for commercial purposes that can endanger the health, survival, dignity or development, acts of violence 4 e obtained from people who are responsible, trusted or in power in the protection of the Child. Children who conflict with the Law because of the condition of being victims of sexual violence must 13 receive protection as witnesses in the criminal justice process. In the Juvenile Criminal Justice System Law number 11 of 2012, it is stated that every Child who

¹ LPSK, *Dedikasi Kerja Keras Melindungi Untuk Korban Korban Kekerasan Kekerasan Seksual Perempuan Anak Dan Perempuan Anak*, 2021 <<https://lemon.lpsk.go.id/index.php/s/dbnnaDjFekWgk4S>>.

² detikhealth.com, 'KPAI: 88% Keke 25 an Seksual Anak Di Sekolah Pelakunya Guru Dan Kepala Sekolah.', 2022 <<https://health.detik.com/berita-detikhealth/d-5902721/kpai-88-kekerasan-seksual-anak-di-sekolah-pelakunya-guru-dan-kepala-sekolah>>.

is a witness or victim of a crime must be given a guarantee of safety, protection of identity, the right to get assistance, and the right to be accompanied by a defender.

The Child's statement has the value of evidentiary power for judges, which can be used as evidence for instructions.³ In Article 1 Number 26 of the Criminal Procedure Code, it is determined that a witness is a person who can provide information for an investigation, prosecution, and trial regarding a criminal case that he has seen and experienced himself by stating the reasons for that knowledge. Subekti also noted that a witness is a person whose testimony is heard before a court hearing and has the task of assisting a court in a case. Witnesses as evidence are regulated in the Criminal Procedure Code, which is needed in proving criminal cases.⁴

The presence of witnesses is a requirement for the validity of a witness statement as evidence. However, there are times when the perpetrator and the victim only witness a criminal act, or a crime alleged to have occurred. Another problem is when a child becomes a witness or even experiences a crime himself. Several cases of sexual violence against children became public news when Herry Wirawan, the defendant, raped 13 female students and was sentenced to death and chemical castration. Another sexual violence case involved a motivator, Julianto Ekaputra (JE), where the four children who reported it were then bullied by their environment. They considered slander, considered a lie. This resulted in victims of sexual violence often not wanting to say it. Threats to children and their families were also made by the defendant in the sexual harassment case, Julianto Eka Putra (JE), Founder of the Indonesian Good Morning School. JE is known to try to intimidate and 'bribe' the victim's family. Nine witnesses and victims were intimidated by the perpetrators. In addition to threats and intimidation experienced by victim-witnesses, law enforcers often experience difficulties conducting examinations. Law enforcers must take a humane legal approach when conducting investigations against child witnesses to obtain information that can be used as evidence in court.

This article used normative legal research with a statute and a phenomenological approach. The phenomenological method is carried out to emphasize the exploration of the meaning and relation of child witnesses who are victims of sexual violence in certain situations. The use of qualitative methods in this article is also carried out through an

³ Amrizal Siagian and Esi Sumarsih, 'Kekuatan Saksi Anak Sebagai Alat Bukti Dalam Tindak Pidana Persetuban Terhadap Anak', *Mizan: Journal of Islamic Law*, 4.2 (2020), 203–14 <<https://doi.org/10.32507/mizan.v4i2.815>>.

⁴ Subekti, *Kamus Hukum* (Jakarta: Pradya Paramita, 1976).

14 approach to cases of sexual violence against children.

Discussion

Children are a vulnerable group that requires special attention in efforts to develop public health because their future is still long. In the end, children are expected to become the nation's leaders and continue the country's development. To improve the health status of children in Indonesia, it is necessary to develop comprehensive and directed child health development efforts on all health problems due to disease and other issues. Sexual violence experienced by a child can result in disruption of the process of child development. If this situation is not appropriately handled early, it will impact the decline in the quality of Indonesia's human resources.

14 The Criminal Code does not explicitly mention sexual violence against children. The Criminal Code calls it an act of sexual harassment. Article 289 of the Criminal Code states, "Whoever by violence or threats of violence or threats of violence forces someone to commit or allow obscene acts to be carried out, is punished for his fault in committing an act of violating decency with a maximum imprisonment of nine years." A person who has committed a crime will be subject to sanctions if he has fulfilled the elements of a criminal act. The features of a criminal act that must be fulfilled include an act that fulfills the formulation of the Law and is against the Law carried out by a person or group of people who are considered capable of being responsible. In the end, perpetrators of sexual abuse of children must be held accountable for their actions following applicable laws. In the case of HW and JE, they can be prosecuted under the criminal sanctions provisions in Article 289 of the Criminal Code. This is because both HW and JE, with their power relations, have forced their will on their students with threats and intimidation, resulting in sexual harassment and rape.

Perpetrators of sexual abuse of children or commonly called pedophiles, can be subject to sanctions based on the provisions of the Criminal Code. Sanctions for pedophiles according to the Criminal Code consist of: Sexual intercourse In terms of sexual intercourse, it is sexual intercourse carried out by adults against women outside of marriage, where the victim is a minor.

20 Article 287, paragraph 1 states that: "Whoever has intercourse with a woman outside of marriage, even though it is known or should be suspected, that she is not yet fifteen years old, or if her age is not proven, is not yet capable of marriage, is threatened with a maximum imprisonment of nine years."

Article 288, paragraph 1 of the Criminal Code states that: "Whoever has intercourse with a woman in marriage, who is known or ought to be suspected that before being able to marry, is threatened if

the act results in injury, with a maximum imprisonment of four years." imposing the will of an adult on a minor that is carried out without or with violence. Sexual intercourse without violence can occur by means or efforts of adults by persuading the victim by luring the victim with something or a gift that makes the victim happy and interested. Thus the perpetrator feels younger to carry out his intention to have sex with the victim. 2

Article 290, paragraph 2 of the Criminal Code states: "that is punishable by a maximum imprisonment of seven years: whoever commits an obscene act with someone even though it is known or proper, it must be suspected that he is not yet fifteen years old or is not married. 2

Article 290, paragraph 3 of the Criminal Code states: "that whoever persuades someone who is known or duly suspected that he is not yet fifteen years old or is not yet married, to commit or allow obscene acts to be carried out, or to have intercourse outside of marriage with another person."

Article 292 of the Criminal Code states: "that a person who is old enough, who commits an obscene act with another person of the same sex, who is known or duly suspected, that is not old enough, is threatened with a maximum imprisonment of five years."

Article 293, paragraph 1 of the Criminal Code states: "that whoever by giving or promising money or goods abuses a carrier arising from a misleading relationship deliberately moves a person who is not old enough and has good behavior, to commit or allow an obscene act to be carried out with him, even though he is not old enough. It is punishable by a maximum imprisonment of five years."

Article 294, paragraph 1 of the Criminal Code states: "that whoever commits an obscene act with his Child, stepson, adopted Child, Child under his supervision who is not yet old enough, or with a person who is not old enough to take care of him, his education or care is left to him or his bachelor or subordinates. Those not of sufficient age shall be punished by a maximum imprisonment of seven years." The definition of this obscene act is an act that is carried out by committing indecent acts related to the victim's body in terms of attacking the honor of the victim in the context of immoral acts and those committed by adults to minors.

Article 295 of the Criminal Code states:

1e. "With a maximum imprisonment of five years, whoever intentionally causes or facilitates obscene acts committed by his child, stepson or adopted child who is not yet an adult, by a child under his supervision, a minor who is handed over to him, so that he nurtured, educated or guarded or his underage bachelor or people under him with other people."

2e. "With a maximum imprisonment of four years, any person who

intentionally, apart from the things mentioned in 1e, causes or facilitates an obscene act with another person which is carried out by a minor, which he knows or reasonably suspects, that he has not mature."

In addition to the Criminal Code, legal protection for children who experience sexual violence can be used by the Sexual Violence Criminal Act. It is expressly stated that for cases of sexual violence, criminal acts cannot be resolved outside the judicial process¹³ restorative justice except for child perpetrators as regulated in the Juvenile Criminal Justice System Law. The presence of the Law on the Crime of Sexual Violence is expected to help victims¹⁰ of sexual violence. There are nine types of sexual violence crimes: non-physical sexual harassment; physical and sexual harassment; forced contraception, forced sterilization; forced marriage; sexual abuse; sexual exploitation; sexual slavery; and electronic-based sexual violence. The nine types of sexual violence crimes will help fulfill the rights of victims to handle, protect, and recover victims, considering that perpetrators often avoid responsibility if they only use the Criminal Code. Therefore, a comprehensive arrangement of procedural Law from the stage of the investigation, prosecution, and examination in court with due observance of and upholding human rights, honor, and without intimidation is expected to help victims of sexual violence.

Obscene acts are acts committed by adults against minors to commit acts contrary to the victim's honor. Children who are victims of sexual abuse will have a psychological impact that will give birth to prolonged trauma which can then give birth to unhealthy attitudes, such as inferiority, excessive fear, disturbed mental development, and ultimately mental retardation. This situation may be a bad memory for the child victims of sexual abuse.¹⁹

The United Nations Convention on the Rights of the Child, which the Indonesian government has ratified through Presidential Decree no. 36 of 1990, states that the Basic Needs of Children include 4 (four) basic principles, namely: 1. Non-discrimination 2. The best interests of children 3. The right to survival and development 4. Respect for the opinion of children. To ensure the fulfillment of children's rights so they can live, develop and participate optimally with human dignity²⁶ and receive protection from violence and discrimination to realize quality, noble and prosperous Indonesian children.

Children victims of sexual violence crimes who ultimately have to be witnesses in court will experience prolonged trauma during the examination process until the trial. One of the potentially influential factors that can influence the perception of the credibility of a child witness' attitude is when they first confront the defendant in the courtroom. The difficulty of extracting information from witnesses of victims of sexual violence is undoubtedly a problem. Remember that

when examining a child as a witness and a child as a victim, the trial is closed to the public. Judges, Public Prosecutors, and Legal Counsels do not wear toga or official attributes.

4 Article 18 of the Juvenile Criminal Justice System Law states that in handling cases of children, child victims, child witnesses, Community Counselors, Professionals Social Workers, and Social Welfare Workers, Investigators, Public Prosecutors, Judges, Advocates or legal aid providers others must pay attention to the best interests of the Child and strive to maintain a family atmosphere. Law enforcers are expected to take a humane approach to child witnesses. The humanistic approach is defined as paying attention, and prior learning is an effort to build communication and individual relationships with individuals and groups.⁵ A humanist approach will create a family atmosphere that makes children comfortable and child-friendly and does not cause fear and pressure.

A humanistic approach can also be taken by taking into account the provisions of Article 19, namely (1) The identity of the Child, Child Victim, and Child Witness must be kept confidential in reporting in print or electronic media. (2) The identity, as referred to in paragraph (1), 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 matters that may reveal the identity of the Child, Child Victim, and Child Witness.

To provide legal protection for child witnesses, Article 23 states that (1) At each level of examination, the Child must be given legal assistance and accompanied by a Community Counselor or other assistant following the provisions of the legislation. (2) At each level of examination, the Child Victim or Child Witness must be accompanied by a parent and person trusted by the Child Victim and Child Witness or Social Worker. (3) In the case of parents as suspects or defendants in a case being examined, the provisions referred to in paragraph (2) do not apply to parents.

The involvement of parents in every investigation process will certainly provide a sense of security and comfort to child witnesses. It is stated in Article 27: (1) In investigating a Child case, the Investigator must ask for consideration or advice from the Community Counselor after the criminal acts reported or reported. (2) If necessary, the Investigator may seek consideration or advice from educational experts, psychologists, psychiatrists, religious leaders, Professional Social Workers or Social Welfare Workers, and other experts. (3) In the case of

⁵ Budi Agus Sumantri and Nurul Ahmad, 'Teori Belajar Humanistik Dan Implikasinya Terhadap Pembelajaran Pendidikan Agama Islam', *Fondatia*, 3.2 (2019), 1–18 <<https://doi.org/10.36088/fondatia.v3i2.216>>.

examining the Child Victim and the Child Witness, the Investigator is obliged to request a social report from the Professional Social Worker or Social Welfare Personnel after the criminal act is reported or reported.

Meanwhile, in the examination process to obtain the Child's information, it is stated in Article 58 (1) When examining the Child of the Victim and the Child of a Witness, the Judge may order that the Child be brought out of the courtroom. (2) During the examination of Child Victims and Child Witnesses, as referred to in paragraph (1), parents/guardians, advocates or other legal aid providers, and Community Counselors are still present. (3) If the Child of the Victim and the Child of the Witness cannot attend to give testimony before the court session, the Judge may order the Child of the Victim and the Child of the Witness to have their statements heard.

In searching for evidence related to sexual violence faced by children, documentation will be needed that can be used during meetings between witnesses/victims in the courtroom. In a criminal trial, law enforcers should be able to use video recordings of the testimonies of children who are victims of sexual violence to avoid prolonged trauma and to avoid possible emotional stress. At the very least, law enforcers seek to separate child witnesses to meet with the accused.

Suppose a child victim witness may not respond to a moment of confrontation in a manner that is in line with the Judge's expectations. In that case, it is necessary to approach the child victim witness that they are prepared to appear in the courtroom and will meet with the prosecutor, social worker, the accused, and police officers. Child witnesses need to be informed that this is a public court procedure and that it tells them that even if the accused is present, it cannot harm them. This information is provided to reduce children's anxiety about testifying and is believed to be associated with a more relaxed and confident attitude when they are in the courtroom.

Remember that in Article 171 of the Criminal Procedure Code, the testimony of child witnesses is not valuable as legal evidence. However, the information provided can be used as a guide that can strengthen the Judge's belief about the existence of a crime of sexual violence. In the provisions of Article 185 paragraph (7) of the Criminal Procedure Code, it is stated that statements from witnesses who are not sworn in, even though they are by one another, are not evidence. Still, if the information is from the statements of witnesses sworn in, they can be used as additional legal evidence. Provisions concerning that there must first be valid evidence, such as evidence, witness testimony, expert evidence, letter evidence, or defendant's testimony. Therefore, the extraordinary evidence has met the minimum limit of proof. Namely, there have been at least 2 (two) proper pieces of evidence and an oath

statement by the witness testimony.

Conclusion

The position of the Child as a witness to a crime in juvenile criminal justice guarantees that a child witness to a crime needs to be freed from threats, namely all forms of actions that have consequences, either directly or indirectly, that cause child witnesses to feel afraid regarding giving their testimony in a criminal judicial process. The success of a juvenile criminal justice process is highly dependent on the evidence that has been uncovered or found. Witness testimony is a very decisive element in the criminal justice process. Therefore, it is necessary to create a conducive climate through more humane handling by providing legal protection and security to child witnesses of a crime who knows or finds something that can help uncover criminal acts that have occurred and report this to law enforcement.

According to the criminal justice system, legal protection for children witnessing crimes emphasizes that children are entitled to all protections and rights regulated in the provisions of laws and regulations, such as medical rehabilitation and social rehabilitation, both within and outside the institution. Guarantee of safety, both physical, mental, and social, and the ease of obtaining information regarding the development of the case. Child witnesses of criminal acts in need can get protection from institutions that handle witness and victim protection or social protection houses by the provisions of the applicable laws and regulations.

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