

# LAW ENFORCEMENT AGAINST PERPETRATORS OF CHILD SEXUAL VIOLENCE

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## Keywords

*Child Sexual Violence, Law Enforcement, Barriers*

## ABSTRACT

The definition of abuse (violence) is not only interpreted physically, but also mentally and even passively (neglect). It can be known, it is undeniable that on the other hand, Abuse in its implementation cannot be separated from the element of violence. Violence can be interpreted as wrong treatment, cruel treatment. In this regard, the problem is: how to enforce the law against sexual violence against children and how obstacles are to the implementation of law enforcement against sexual violence against children. The method used in this study uses a normative juridical method, namely research that focuses on finding legal norms, legal principles and legal doctrines to answer the legal issues to be studied. The results of this study found that the form of law enforcement used in this case uses a preventive method which prevents a person from committing a criminal act for the first time and also in the implementation of law enforcement there are still inhibiting factors that make the implementation of this law enforcement not run optimally, namely internal factors and external factors. Therefore, professional law enforcement is needed and also who can involve other stakeholders so that this law enforcement can run better.

## INTRODUCTION

The definition of abuse (violence) is not only interpreted physically, but also mentally and even passively (neglect). It can be known, it is undeniable that on the other hand, Abuse in its implementation cannot be separated from the element of violence. Violence can be interpreted as wrong treatment, cruel treatment. **Terry E. Lawson** said that child *abuse* ranges from neglect to rape and murder, which can be classified into: 1. Emotional abuse, 2. Physical abuse, 3. Sexual abuse (Gultom, 2012). In this case, the violence in question is violence that is prohibited by law. The importance of laws in a country because laws are political tools to achieve state goals. The law itself is a written regulation that contains legal norms, formed or determined by state institutions as a source of law to be obeyed and obeyed by all people without exception.

Efforts to overcome the crime of sexual violence against children can be carried out through 2 (two) ways, namely by preventive and repressive methods. The preventive method in question is a countermeasure that is sought to prevent someone from committing a criminal act for the first time.

Meanwhile, what is meant by repressive means is countermeasures carried out to take action against the perpetrators of criminal acts according to their actions.

Every child has the right to survival, growth, and development as well as protection from violence and discrimination. This is expressly stated in Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and is the philosophical basis in providing protection for children. In fact, sociologically, cases of sexual abuse of children have entered a worrying or tragic stage. The right of children to be free from persecution and physical violence can be said to often happen to children. Made Darma Veda said, "the crime of rape is a crime that has received quite a lot of attention among the community, because the quantity in the community seems to be increasing, causing unrest in the community". The problem of rape that occurs in children is an example of the inferiority of women's position towards men's sexual interests (Akunna et al., 2022; Du Toit & Le Roux, 2021; Hamid, 2021), the sexual image of women who have positioned themselves as male sexual objects turns out to have far-reaching implications. In their daily lives, women are always faced with violence, coercion and torture both physically and psychologically. On that basis, rape is not only a reflection of the image of women as an object of sex, but as an object of male power (Anshari, 1997). That means that women are still placed in marginalized positions. Women are not only the object of sexual satisfaction of men, but are familiar with various forms of violence, which are seen as weak creatures, which must be controlled, exploited and enslaved by men.

The occurrence of violent crimes against children is definitely a perpetrator. What is meant by perpetrators is a person who is suspected of committing a legal act, law, norm, and value that applies in society (Dayan, 2020; Sitorus et al., 2022; Yustisianto et al., 2022). Child protection is an effort and activity of all levels of society in various positions and roles, who are well aware of the importance of children for the country and the nation in the future. If they have matured in physical or mental and social growth, then it is time to replace the previous generation.

Child protection is an effort to protect children so that they can carry out their rights and obligations (Gosita, 1989). Article 13 of Law No. 23 of 2002 on Child Protection, stipulates that: (1) Every child while in the care of a parent, guardian, or any other party responsible for upbringing, is entitled to protection from treatment: 1. discrimination; 2. exploitation, both economic and sexual; 3. neglect; 4. cruelty, violence, and persecution; 5. injustice; and 6. other mistreatment. (2) In the event that a parent, guardian or caregiver of a child commits any form of treatment as intended in paragraph (1), the perpetrator shall be subject to punishment.

The essence of the judiciary is judicial power, with judges as executing officials in order to provide justice, in addition to being responsible for the oath of office, judges are also responsible for the law, themselves, the people and God Almighty. Article 5 paragraph (1) of Law No. 4 of 2004, stipulates that the court adjudicates according to the law by not discriminating against people, this provision emphasizes that the court as a Judicial Body/Institution in adjudicating views that the dignity and dignity of a person are equal before the law (Gultom, 2012). However, in fact, the implementation of the punishment has not been maximized because there are various factors, so we use the theory of Satjipto Rahardjo which states that there are 3 (three) elements of law enforcement, namely lawmaking, law enforcement, and the environment.

The placement of the word "child" in juvenile justice shows the Limitations on cases handled by the Judiciary, namely juvenile cases. The process of providing justice in the form of a series of actions carried out by judicial bodies is adjusted to the forms and needs of children. The scope of juvenile justice which includes: a. All examination activities; b. termination of the case; c. matters related to the interests of children. Then during the Covid-19 pandemic, various forms of human habits have changed that must be adjusted in a new way to prevent the spread of the virus. This also includes the practice of court trials that are forced to switch to online electronic media .

This research investigates the enforcement of laws against sexual violence towards children, emphasizing both the practical application of these laws in everyday life and judicial proceedings. It aims to identify the methods and measures used to uphold these laws and to analyze the challenges faced in their implementation. The study formulates two primary questions: what specific forms does law enforcement take in cases of sexual violence against children, and what obstacles hinder the effective enforcement of these laws.

## METHODS

This research uses normative juridical research, focusing on finding legal norms, legal principles, and legal doctrines to answer the legal issues being studied, and includes data sources such as statutes, regulations, and legal codes pertaining to child protection and sexual violence in Indonesia.

## **RESULTS**

### **Forms of Law Enforcement Against Sexual Violence Against Children**

The existence of law in society is urgent and crucial, considering the function of law as a protector of human interests from all disturbances and losses, both physical and moral, committed by other parties unlawfully. With the law, it is also hoped that the ideal of justice for human beings will be realized, namely a safe and peaceful society. This can only be realized through an independent and independent judiciary, in accordance with the words of Article 1 paragraph (1), namely: Judicial power is the power of an independent state to hold a judiciary to uphold law and justice based on Pancasila and the Constitution of the Republic of Indonesia in 1945, for the implementation of the State of Law of the Republic of Indonesia. On the other hand, there is a phenomenon that is still difficult to accept as a means of legal protection for crime victims. This proves that there are still many and increasingly complex cases around the protection of witnesses and victims, including the protection of perpetrator witnesses, whistleblowers and expert witnesses. This happens because in addition to the low level of law in anticipating and accommodating developing problems, the law is also weak in its implementation. So that the law, which originally had the purpose of creating justice, became questionable. Law enforcement, especially criminal law, is one of the main tasks of the state. Law enforcement, criminal which is a process of investigation, investigation, arrest and detention to the court, to become a convict in a Correctional Institution (Prison). The unity of the process is called the Criminal Justice System or The Integrated Criminal Justice System. The law enforcement process in the criminal justice system in Indonesia, which boils down to the decision of the judge in court, tends to only dwell or focus on what the suspect or defendant does. Whether the criminal act committed meets or does not meet the formulation of article by article regulated in the Criminal Code (KUHP). In fact, in terms of legal protection, there should be no dichotomy between the perpetrator, witness, and victim. All must obtain the same legal protection (Kenedi, 2020).

In essence, law contains ideas or concepts that can be classified as something abstract. Into abstract groups include ideas about justice, legal certainty and social benefits (Radburch, 1961). When talking about law enforcement, it is essentially talking about the enforcement of ideas and concepts that are abstract. Formulated in other words, law enforcement is an effort to realize these ideas into reality (Rahardjo, 2009). Then, the elements of law enforcement are divided into 3 (three), namely a) Lawmaking, b) Law Enforcement, and c) Environment.

The concept of thinking used is that law enforcement has started at the time the legal regulations are made or created. Law enforcement is a process to realize the wishes of the law into reality. Legal desires are the thoughts of the law-making body formulated in legal regulations. The law enforcement process also extends to the making of laws. The formulation of the mind of the lawmaker as outlined in the legal regulations will also determine how law enforcement is carried out. In reality, the law enforcement process culminates in its implementation by law enforcement officials. The behavior of people in society is not voluntary, but is disciplined by a network of rules that exist in society. These rules are like signs that bind and limit the behavior of people in society, including law enforcement officials.

In relation to the above discussion, the role of legal regulations is quite large in relation to the implementation of regulations carried out by law enforcers. In a tone that may be a bit extreme, it can be said that the success or failure of law enforcers in carrying out their duties has actually started since the legal regulations that must be carried out were made.

Discussing law enforcement without alluding to the human aspect that carries out its enforcement, is a sterile discussion. If discussing law enforcement only adheres to the imperatives as

stated in the provisions of the law, then it will only obtain a stereotypical picture that is empty. Discussing law enforcement becomes content if it is associated with its concrete implementation by humans. The human factor is important because only through these factors is law enforcement carried out.

The second problem is related to environmental issues from the law enforcement process. These environmental problems can be linked to humans personally and to law enforcement as an institution. The emphasis on the influence of the environment on the person of law enforcement cannot be abandoned at all. Discussions on law enforcement without involving environmental influences are felt to be lacking (Rahardjo, 2009). Efforts to overcome crime can be broadly divided into two, namely through the "penal" (criminal law) and through the "non-penal" (non/outside criminal law) route.

In the above division, the efforts mentioned in the first and second items can be included in the group of "non-penal" efforts (non/outside the criminal law). Roughly speaking, it can be distinguished that efforts to overcome crime through the "penal" route focus more on the "repressive" nature (suppression/eradication/suppression) after the crime has occurred, while the "non-penal" route focuses more on the "preventive" nature (prevention/deterrence/control) before the crime occurs. It is said to be a difference roughly because repressive actions in essence can also be seen as preventive measures in a broad sense. Considering that efforts to overcome crime through the "non-penal" route are more preventive measures for the occurrence of crime, the main goal is to deal with the conducive factors that cause the occurrence of crime (Arief, 2005).

Then in Law Number 35 of 2014 concerning Child Protection, article 76D states: "Everyone is prohibited from committing violence or threats of violence to force a child to have intercourse with him or with another person." And in article 76E it states "Every person is prohibited from committing violence or threats of violence, coercing, committing deception, committing a series of lies, or persuading a child to commit or allow obscene acts to be committed."

Then in article 81 it is stated that "Every person who violates the provisions as referred to in Article 76D shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah)". Article 82 also states that "Every person who violates the provisions as referred to in Article 76E shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah)".

Then in the example of this case, in the decision of case **Number 155/Pid.Sus/2022/PN Mjl**, stating that the Defendant mentioned above, is legally and convincingly proven guilty of committing a criminal act by deliberately persuading a Child to have sexual intercourse with him as in the first alternative indictment; Sentence the Defendant therefore with imprisonment for **10 (ten) years** and a **fine of Rp1,875,000,000.00** (one billion eight hundred and seventy-five million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 2 (two) months;

Meanwhile, in the decision of case **Number 212/Pid.Sus/2022/PN.Cbn**, it is stated that the Defendant has been legally and convincingly proven guilty of committing the crime of "Deliberately forcing an obscene act against a Child", as in the First Indictment of the Public Prosecutor; Sentence the Defendant therefore with imprisonment for **7 (seven) years** and a **fine of Rp 20,000,000.00 (twenty million rupiah)** with the provision that if the fine is not paid, it will be replaced with imprisonment for 3 (three) months;

This shows that there are two ways of law enforcement, namely preventive and repressive methods. In this case, preventive measures are applied as an effort to prevent someone from committing a criminal act. Then law enforcement is also often not running optimally and this is influenced by several factors.

**Obstacles in the Implementation of Law Enforcement Against Sexual Violence Against Children**

As is well known, witnesses or victims, as well as the defendant have an important role in resolving legal problems. They are people who hear, see, or experience the occurrence of a criminal act themselves. So, with this status, the information is very much needed in the process of finding and finding clarity about the criminal acts committed by the perpetrators. Witness statements from or victims are one of the valid evidence in the judicial process. It is also one of the main considerations for judges in seeking facts, in order to obtain the fairest decision in the trial process in court.

There are several factors that can hinder the implementation of law enforcement not running optimally, there are 3 (three) elements, namely a) Law Making, b) Law Enforcement, and c) Environment (Rahardjo, 2009). These elements can be factors that hinder the implementation of not running optimally, the law-making factor itself can be a factor that can hinder a law enforcement such as regulations that are made late to be passed, where the situation has changed to many new crimes that are not regulated in the regulation. Furthermore, the law enforcement factor in this case is law enforcement officials, namely police, prosecutors, lawyers, and judges, these law enforcement officials have bad habits that are not in accordance with the values of professionalism and integrity, thus affecting their image and effectiveness in carrying out their duties to make public trust decrease due to these bad behaviors. Then environmental factors, this factor concerns the community or community awareness and also culture where the lack of public awareness is for example due to the lack of socialization about existing regulations and legal culture related to values, norms and traditions which from one society to another can be different regarding the application of the law.

Talking about law enforcement, and in this case related to case examples from court decisions, this is certainly related to a law enforcer, namely a judge. In deciding a case, the judge must have confidence based on the basis of proof accompanied by applicable legal rules. The evidentiary process in the Indonesian criminal justice system gives the judge the freedom to draw and draw his or her beliefs from the available evidence, but these beliefs must be based on a conclusive conclusion. Article 183 of the Criminal Code states that a judge may not impose a criminal sentence on a person unless with at least two valid pieces of evidence he has obtained confidence that a criminal act really occurred and that the defendant is guilty of committing it.

Judges, being ordinary human beings, can be influenced in their decision-making by internal factors such as faith, experience, knowledge, and personal needs, as well as external factors like laws and regulations, political pressures, community pressure, and bribery.

Judges' decisions that break through the minimum criminal threat and minimum fine can be accepted and considered valid as long as they are based on a sense of justice and conscience, because judges are not only law enforcers but also justice enforcers, as long as there is no interest of the judge deciding the case. The judge's decision that breaks through the provisions of the normative law, or in this case under the demands of the public prosecutor, may or may not be accepted for the sake of the law as long as it is based on an objective sense of justice.

Then from the obstacles mentioned above, obstacles to the law enforcement process have also emerged since the Covid-19 pandemic in 2019/2020 which is one of the obstacles to the course of the law enforcement process, one example is the case in 2022 at the juvenile trial regarding sexual violence against children at the Majalengka District Court, namely during the Covid-19 pandemic.

The Covid-19 pandemic has changed various forms of human habits that must be adjusted in new ways to prevent the spread of the virus. This also includes the practice of court trials that are forced to switch to online electronic media .

One of the principles of examining the defendant in criminal justice according to the Criminal Procedure Code (KUHAP) requires the public prosecutor to "present" the defendant in front of the court session freely. In principle, the examination at the court hearing cannot be carried out without the presence of the defendant. This applies to all general criminal acts. However, in certain and urgent

circumstances, the court may decide to conduct an examination at the court hearing without the presence of the defendant.

In-absentia criminal justice in short is a judicial process that is carried out without the presence of the defendant himself, from the beginning of the examination until the sentencing by the court. A trial in absentia is an attempt to try a person and punish him or her without the presence of the defendant. As mentioned earlier, in-absence proceedings are carried out in special or urgent circumstances (Miu, 2013).

That in the previous explanation, it was explained that the circumstances at the trial of the child in question took place during the covid pandemic, which made the trial must be held online.

The role of judges in law enforcement is to get justice. In the context of proving criminal cases through teleconference hearings, if referring to **Mahfud MD's** opinion, upholding the values of justice is much more important than just carrying out various formal procedures of legislation in law enforcement. So if you look at Mahfud MD's opinion, the trial through teleconference is valid because the judge in it is trying to uphold justice even though it is out of the formal procedure of the law. The trial by teleconference with its evidence is not regulated in the Criminal Procedure Code, but if you refer to the theory of responsive law, the law is a tool to respond to social needs and people's aspirations used in the process of making government policies. Thus, Perma was raised regarding online trials during the covid pandemic and the MoU or Cooperation Agreement of the Supreme Court of the Republic of Indonesia, the Attorney General of the Republic of Indonesia and the Ministry of Law and Human Rights of the Republic of Indonesia No.379/DJU/PS.00/3/2020 concerning the Implementation of Trials Through Teleconference as a form of policy that responds to the public's need for justice in the midst of a pandemic situation that is not yet known when it will be completed. The quick response of the law enforcers to continue to carry out criminal trial in the midst of a pandemic, according to **Suparna S.H.**, the reason is that the justice of criminal trials in the midst of covid conditions is one of the forms of upholding justice because justice cannot be delayed. Suparna's opinion is in line with the opinion put forward by **William Gladstone** that *justice delayed is justice denied*, which means that being late in giving justice is also another form of injustice.

According to the author, the Supreme Court's efforts as a judicial institution in Indonesia to make a legal breakthrough in teleconference trials, even though they are not regulated in the Criminal Code, are a form of upholding justice that cannot be delayed in the midst of a dangerous pandemic situation if a direct trial is held. The purpose of law is legal certainty, justice and utility. In relation to proof through teleconference hearings, it is called valid or not if it refers to the theory of utilitarianism that the law, in addition to certainty and justice, certainly pays attention to benefits, then the proof carried out during the pandemic is valid because it is in an effort to realize legal certainty, justice and utility. This was justified by Suparna SH that in order to realize three legal objectives, namely legal certainty, justice and usefulness in criminal justice during the pandemic, the Supreme Court must continue to conduct electronic hearings or online hearings via teleconference in all its agendas ranging from examination, proof to the final process.

This means that if referring to theoretical studies, the proof in criminal cases is legal because the trial through teleconference is one of the forms of upholding legal objectives, namely legal certainty, justice and utility. Especially in the case of the Covid-19 pandemic emergency, there is one principle in the law, namely Solus Populi Suprema Lex Esto, namely: "The safety of the people should be the supreme law –the welfare of the people shall be the supreme law" This means that the safety of the people is the highest law. In addition, there is also a theory in the law, namely The Law of the Exception: A. Typology Of Emergency Powers which means that the characteristics of emergency law, must have a variety of norm exceptions. Referring to the two theories of people's safety and emergency in the law, the proof in criminal cases is legally valid.

In Article 1 paragraph 4 of PERMA No. 4 of 2020, it is explained about the Court Information System, which is the entire information system provided by the Supreme Court to provide services to

justice seekers which includes Case Administration and Electronic Trials. For the definition of electronic trial, it is written in the provisions of Article 1 paragraph 12 of PERMA No. 4 concerning Electronic Criminal Administration and Trial in 2020, namely "Electronic trial is a series of processes of examining, adjudicating, and deciding the case of the Defendant by the Court which is carried out with the support of information technology and audio-visual communication and other electronic means." In terms of the conduct of electronic trials, in Article 12 of PERMA No.4 of 2020 concerning Electronic Administration and Criminal Trials, it reads: "Adjudication is a series of actions by the Judge to receive, examine, and decide criminal cases based on the principles of freedom, honesty, and impartiality in Court hearings in terms and in the manner regulated in the law and electronically."

In addition to the Perma, the legal basis for conducting trials by teleconference during the pandemic is that the Supreme Court disseminated letters, namely No.B-049/A/SUJA/03/2020 and No.379/DJU/PS.00/3/2020 concerning the Implementation of Trials Through Teleconference in the midst of efforts to overcome the widespread spread of Covid-19 through the letter, the Supreme Court has appealed to all courts in Indonesia to carry out electronic trials of criminal cases through teleconference. Because it is in the midst of the Covid-19 pandemic and in order to break the chain of the spread of Covid-19. After that, the Supreme Court issued Circular Letter Number 1 of 2020 concerning Guidelines for the Implementation of Duties During the Prevention Period of the Spread of Corona Virus Disease 2019 (COVID-19) within the Supreme Court of the Republic of Indonesia and the judiciary under it. In addition, in Article 5 paragraph (2) of the ITE Law, it is determined that electronic information or electronic documents and/or printed results as referred to in paragraph (1) are an extension of valid evidence and in accordance with the applicable procedural law in Indonesia.

Thus, that the ITE Law has determined that electronic documents and/or their printed results are a valid evidence and an extension of valid evidence in accordance with the procedural law that has been in force in Indonesia, so that it can be used as evidence in front of the court.

Furthermore, based on the provisions of Article 5 paragraph (3) of the ITE Law, it is determined that electronic information and/or electronic documents are declared valid if they use an electronic system in accordance with the provisions of the ITE Law. Thus, the use of electronic documents as a means of evidence that is considered valid when using an electronic system in accordance with the provisions as stipulated in Article 6 of ITE Law Number 11 of 2008, which determines that **electronic documents are considered valid as long as the information contained in them can be accessed, displayed, guaranteed to be intact, and can be accounted for, thus explaining a situation.** In addition, electronic documents whose position can be equated with documents made on paper, as specified in the General Explanation of the ITE Law.

## **CONCLUSION**

In this case, the form of law enforcement used in this case uses a preventive method which prevents someone from committing a criminal act for the first time and also in the implementation of law enforcement there are still inhibiting factors that make the implementation of this law enforcement not run optimally, namely internal factors and external factors. Therefore, professional law enforcement is needed and also who can involve other stakeholders so that this law enforcement can run better.

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