

Legal Protection Based on Trancendental Perspective Against Child Sexual Abuse in Indonesia

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Abstract

Introduction: Sexual child abuse becomes a serious concern due to its alarming rate. It is claimed to bring serious hindrance in psychosocial development of children in the future. In 2015, the Survey on Violence against Children was carried out by the Ministry of Social Affairs, the Ministry of Women Empowerment and Child Protection and several agencies, in which it found prolonged and detrimental trauma in victims. The present study reveals sexual child abuse, legal protection against it, and approach in solving the case

Material and Method: It is a literature study that aims at examining references to theories relevant to the problem

Findings: The result reasserts the prevalence of child sexual abuse and the psychological impact of mental trauma, fear, shame, anxiety, even suicidal attempt.

Conclusion: The “soft” punishment for child sex offender is palpable evidence. Hence, an approach based on transcendental perspective based on the spiritual values contained in Islamic

Keywords: *legal protection, child sexual abuse, transcendental perspective*

Introduction

Child sexual abuse is an **alarming** reality and is being increasingly reported all around the world. In fact, paediatricians and medical professionals are usually the first point of contact with the victims and their families. **They have a key role in detecting such an abuse and providing immediate treatment and support**¹. Evidence confirms the prevalence of violence against children. As a part of the post-2015 Sustainable Development Agenda, the United Nations has called to end children sexual abuse at global level².

The victims of sexual abuse, however, have a range of health and social issues that should be identified, requiring further intervention. Comprehensive medical care has a significant role to protect children³. Sexual

exploitation of children is a topic that deserves increasing attention from research, health care, and social service communities⁴. Nevertheless, cases of violence against children are not always successfully diagnosed due to the limitations of paediatricians who may have less experiences or understanding of the proper evaluation approach. Yet there are many new methods to assist in the recognition of abuse, including screening instruments and electronic medical records for consultation with the Child Protection Program⁵.

Child sexual abuse potentially devastates child’s psychosocial, growth and development in the future. The Ministry of Social Affairs, the Ministry of Women Empowerment and Child Protection (KPPPA) and a number of agencies collaborated in the Survey on Violence against Children, in which it found out that the prevalence of sexual abuse in groups of male and female aged 18-24 years could be classified “high”. The percentages were 6.36% and 6.28%, respectively, for male and female groups under 18 years old. There were 39 cases in Semarang City in 2015, consisting of 25

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cases of rape, five cases of sexual abuse and nine cases of sexual harassment⁶.

Government has enacted Law No. 17 of 2016 on Stipulation of Government Regulation in Lieu of Law No. 1/2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection. It should have a deterrent effect because it does not merely regulate criminal sanctions and the exposure of the identity of perpetrators, but also an additional legal threat of chemical castration and the installation of electronic detector for adult perpetrators. But on the contrary, continuous recurrence and disclosure of child sexual abuse increasingly spread fear, anxiety, even terror in the community⁷.

Child sexual abuse is closely linked to adulthood and it potentially affects child's psychic experience. Child sexual abuse with psychic experiences has adverse effect in adulthood. Some evidences show that the proportion of sexual abuse in childhood will lead to the destructive adult life and the trauma relatively lingers to adulthood⁸.

Recently, a psychological therapy is implemented to treat the victims. However, the effectiveness of the method has not been determined yet. In fact, certain traumas cannot be approached by using psychological therapy. Such a therapy should be accompanied by the support of the family in healing the trauma⁹. Protracted trauma is very detrimental to the future of the victims of sexual abuse. Serious treatment is extremely required. Child sexual abuse is associated with a huge risk for psychiatric suffering and less religious involvement, but spiritual and religious engagement and beliefs appear to facilitate resilience in the context of harassment¹⁰. The transcendental paradigm seems to be a prospective alternative in the prevention of sexual abuse. This paradigm is interpreted as a fundamental perspective of the law science that should be studied along with its scientific methods. There are various paradigms as approaches in the development of science, i.e., positivism, post-positivism, holistic and transcendental. In the present study, the authors are interested in discussing Legal Protection Against Child Sexual Abuse from Transcendental Perspective¹¹. It will describe the cases of child sexual abuse, legal protection against child sexual abuse, transcendental perspective, and approaches in solving child sexual abuse.

Method

The type of research is normative legal research,

namely research on the basic principles of law. It may be conducted on primary legal materials and secondary law materials. The present study is a descriptive research that specifically, meticulously and systematically describes legal protection against child sexual abuse from transcendental perspective. Data collection method used in this research is literature study, document study¹². Literature study is conducted by reviewing law and regulations, relevant books, literature, and other scientific works. Data analysis is done qualitatively, comprehensively and completely so as to produce normative-empirical legal research¹³. The data obtained from this study will be analyzed and subsequently presented in detailed, systematic and explanatory description hence conclusion can be drawn.

Results and Discussion

Cases of Sexual Abuse in Children

The last three years have been a year of desolation for Indonesia. The Indonesian Child Protection Commission (KPAI) recorded hundreds of cases of sexual violence against children. KPAI Commissioner released there were 218 cases of child sexual abuse in 2015, 120 cases in 2016, and 116 cases in 2017.

KPAI Chairman argues that the number is far beyond reality since most victims' families are reluctant to file the cases¹⁴. The main reason is the perpetrator of sexual abuse is frequently a relative of the victim¹⁵. Moreover, 68% of perpetrators of sexual abuse are known to the victims while 34% of them are their own parents¹⁶.

Similar case is found by a study in Semarang city. The victim is an elementary school student while the perpetrator is the neighbour of the victim. Her parents are suspicious since the victim endures painful urination hence they decide to see the doctor. It turns out that their child has been sexually assaulted in which she confirms the incident. The case is reported to the authorities and the police arrested the perpetrator. The perpetrator admits he has been done sexual abuse since the last three months. The case is being investigated and the lure proposed to the victim has not been divulged. Yet the perpetrator is claimed to threat the victim while carrying out the action. The perpetrator is charged under article 76e jo 81 paragraph (2) of Law No. 35 of 2014 concerning child protection and/or article 287 of the Criminal Code concerning sexual exploitation of children and is liable to imprisonment for seven years. Nevertheless, the victims

still experience severe trauma and psychological support and assistance is required.

Despite the high crime rate in Indonesia, the sanctions for perpetrators are deemed to be extremely unfair. Consequently, there is no deterrent effect and even, the rate of sexual abuse in children is increasingly high. The injustices indicate an apparent problem related to the legal system. The legal system is defined as a set of networks that are intentionally made for specific purposes in which in the context of criminal justice system, it involves several structures including police, judges and prosecutors. Friedman argues that the development of a legal system involves three interrelated components of the legal substance, legal structure, and legal culture. Moreover, a transcendental perspective in resolving cases of sexual abuse is required. Judges' decisions are an important aspect in settling a case hence every decision must be made in accordance with the value of justice, essential truth, human rights, and morality values¹⁷. Moreover, transcendental is a foundation in the process of civilization. It embodies religion or Islamic values in a civilization and plays a role in giving meaning that will direct the aim of human life. Islam guides people towards the noble values of humanity. By realizing transcendental values in legal system, every order made by the judge will be a fair decision.

Despite the enactment of Law on Child Protection and the establishment of special agency to protect children against violence, the cases continually increase. In 2015, the Child Protection Task Force advocated 52 unresolved cases of child abuse. It implies the fact that collaboration of wide-ranging networks, including the government and relevant agencies, e.g., the Indonesian Child Protection Commission (KPAI), is required to address such cases.

Child sexual abuse can be defined as being forced, threatened or deceived a child into sexual activities. The activities include looking, touching, penetration (intercourse) or rape. It brings physical, psychological, and social impacts on children. **Physical impact can be a tear on the hymen.** Psychological impacts include mental trauma, fear, shame, anxiety or even suicidal attempts or attempts. Social impacts are in the forms of the cynical treatment of the community around the victim, the fear to join the community and so forth¹⁸. Effective prevention of sexual abuse requires attention to the development of the child's overall sexuality not

just limited proscriptions about vaguely identified forms of adult/child touch. A model for prevention of sexual harassment must be established to reduce cases of child sexual violence¹⁹.

Two aspects linked to the issue of child sexual abuse are treatment and prevention aspects. The first aspect is how to provide rehabilitation for the victims of physical and sexual violence. Meanwhile, the second aspect is how to educate family as the smallest scope of society. Furthermore, various factors are linked to the occurrence of child sexual abuse, including poverty and parenting style.

Despite the ratification of various laws, professional codes, or educational authorities, many countries have reported the prevalence of violence against children. Nevertheless, key solution to overcome this issue is indecisive. It is necessary to cooperate with all parties, and to provide protection for children related to their health²⁰.

Sexual Abuse Prevention Model in Transcendental Perspective

Problems related to child sexual abuse can be solved with the Child Advocacy Center (CAC) model. The lack of referral to therapeutic services and support, and potentially traumatic investigation may contribute to low conviction rates for abuse and poor outcomes for children. This model aims to solve the problems by combining multidisciplinary teams, joint investigations, and services, in a child friendly environment²¹. Model A (Assessment of the situation, and activation of the MDT (if available), R (Reporting and referral to proper agencies), I (Information and informed consent), S (Safety and SAMFE-P exam), E (Education and Empowerment) is another alternative²².

Social factors are linked to the treatment of post-traumatic stress disorder (PTSD) after interpersonal trauma. Nevertheless, strategies for social problem solving tend to be overlooked. The current studies employ social problem solving, i.e., rational approach and impulsive strategy as intermediary among the victims. Furthermore, avoidance problem solving serves as a mediator between the three types of abuse and PTSD severity²³. Among several sequelae of child sexual abuse is a maladaptive response to stress. Stress is frequently associated to a reduction in the immune system's ability to resist disease. Grounded theory analysis finds three

themes emerging: hypervigilance, outward-focused hyperawareness; somatic detachment, a lack of inward focus on self; and healing pathway, the process of healing from the abuse. By using these themes, stress on victims is possibly reduced²⁴.

In addition to the prevention of sexual abuse, the model based on the transcendental perspective such as religion, ethics, and morals are positioned as separate parts of a unified development of modern civilization. In its development, it has lost its essential facet, namely the transcendental values. In the epistemology of science, there is a model that integrates the rational science and values that depart from the transcendental spirit. The integration of science, philosophy and religion is offered as the basis of epistemology for scientific learning and research in the future²⁵.

In a transcendental perspective, there are several aspects in Islamic education for children. *First, tawhid* or an absolute monotheism is the first and foremost method in Islamic education for children. By instilling monotheism from an early age to children, it is aspired that they will have a faith that there is no god but Allah SWT. It will enforce the child always believe in God and rebuff any aspects contradictory to Islamic teachings. *Second*, exemplary is a key in Islamic education for children hence all parents are obliged to comprehend it. By being reliable role model for children, they will be grateful with Islam in which they will emulate the behaviour of role model in their lives. *Third, muamalat* is set of rules (*fiqh*) related to worldly matters, which is very important in the context of Islamic-based learning method for children. It is important to teach children how to have absolute faith in Allah and good relationship with fellow human beings²⁶.

Conclusion

The number of the cases of sexual abuse in children is alarming, it reveals the psychological impact on the victims, including mental trauma, fear, shame, anxiety and even desire or suicidal attempt. Apparently, the current legal protection against child sexual abuse can be deemed as neither liable nor effective. The “soft” punishment for child sex offender is palpable evidence. Hence, an approach based on transcendental perspective based on the spiritual values contained in Islamic.

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Ethical Clearance: Not required

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