

Accountability of Criminal Threats for Stepfathers as Perpetrators of Criminal Acts of Sexual Violence Against Girls (Study of Decision 264/Pid.Sus/2023/PN. Lbp)

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Abstract

The crime of sexual violence against children is one of the serious problems in the legal field that requires special attention, considering its damaging impact on the psychology and development of children. This study aims to analyze the role of stepfathers in this crime and their criminal responsibility in accordance with applicable legal provisions, including the Criminal Code (KUHP) and the Child Protection Law. Through a normative legal approach, this study found that in the verdict, stepfathers were punished based on valid and convincing evidence that proved the crime of sexual violence. In addition, the analysis also shows the importance of the role of the justice system in providing maximum protection for child victims, especially in terms of imposing strict punishments and educating perpetrators. The results of this study are expected to contribute to the understanding of how the law responds to cases of sexual violence involving family members as perpetrators, as well as better protection for children in Indonesia.

Keywords: Responsibility for Criminal Threats to Stepfathers and Stepchildren

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Introduction

Sexual harassment is an illegal act and violates human rights. Therefore, action is needed to prevent and prosecute sexual harassment and provide support and assistance to victims. Sexual harassment is also regulated in Articles 281-285 of the Criminal Code (KUHP) concerning crimes against morality. These articles explain the types of sexual harassment, such as intercourse carried out with violence, indecency, and lewd acts. Criminal sanctions for perpetrators of sexual harassment are listed in Article 285 of the Criminal Code, which can be a maximum prison sentence of 12 years.

The occurrence of an unlawful act or crime can be done by anyone regardless of age, gender, and so on. One of them is a person who is not an adult or a child either as a perpetrator, witness or as a victim of a crime. Every child has the right to live, grow and develop, and participate fairly in accordance with human dignity and honor, and to receive protection from violence or discrimination.

sexual abuse that occurs in children is a general term that describes a criminal act. There are effects of sexual violence that occur in children both physically and psychologically. As a result, this condition is considered very necessary to make early sexual education very necessary to provide knowledge and insight and the impacts that occur due to sexual violence.

Cases of sexual violence in Indonesia have increased from year to year, and the victims are not only adults but also children and even toddlers. The phenomenon of sexual violence against children is increasingly common and has become global in almost every country in the world. The perpetrators of these crimes are mostly from the family environment or the environment around the child, including in their own homes, schools, educational institutions, and the child's social environment.

Children are a group that is very vulnerable to sexual violence because children are always positioned as weak or helpless figures, cases of sexual violence against children have a much more serious impact on children, both directly and in the long term. According to the Child Protection Commission, cases of sexual harassment increase every year, some forms of sexual harassment include cases of sexual violence against minors, cases of physical violence and cases of psychological violence.

The rampant sexual crimes against children have made the government pay attention and commit to addressing this issue, until Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection was born, which was made with the intention of perfecting the previous law so that child victims, especially victims of sexual violence, can be better protected.

Formulation of the problem

From the background explained above, the author formulates the problem as follows:

1. How are Legal Protection Arrangements for Children to Avoid Sexual Violence?
2. How is the Criminal Threat Responsibility for Stepfathers as Perpetrators of Sexual Violence Against Daughters?
3. How is the Analysis of Decision 264/Pid.Sus/2023/PN. Lbp against stepfather as the Perpetrator of Sexual Violence Against His Stepdaughter?

Research purposes

The research objectives to be achieved are:

1. To Know the Legal Protection Regulations for Children to Avoid Sexual Violence?
2. To Know the Responsibility of Criminal Threats for Stepfathers as Perpetrators of Criminal Acts of Sexual Violence Against Daughters?
3. To Know the Analysis of Decision 264/Pid.Sus/2023/PN. Lbp against Stepfather as the Perpetrator of Sexual Violence Against His Stepdaughter?

Research methods

This study uses normative legal research methods or doctrinal research. The data sources obtained in this study can be from secondary data, namely data collected through literature studies on the research materials used and the secondary data is divided into several parts, namely, primary legal materials, secondary legal materials.

Primary legal materials are data that have legal force such as laws and regulations, secondary legal materials provide explanations about primary legal materials such as books, journals, the internet, tertiary legal materials are legal materials that provide important instructions or explanations related to primary and secondary legal materials, such as dictionaries.

Results and Discussion

1. Legal Protection Regulations for Children to Avoid Sexual Violence

The definition of protection according to the provisions of Article 1 point 6 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims determines that protection is all efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or Victims which must be implemented by LPSK or other institutions in accordance with the provisions of this Law. Justice is formed by correct thinking, carried out fairly and honestly and is responsible for the actions taken. A sense of justice and law must be upheld based on Positive Law to uphold justice in law in accordance with the reality of society that desires the achievement of a safe and peaceful society. Justice must be built in accordance with the ideals of law (*Rechtidee*) in a state of law (*Rechtsstaat*), not a state of power (*Machtsstaat*).

The principles that must be upheld by the Indonesian state and society in order to provide protection for children are the principles of non-discrimination, the best interests of the child, the right to life, survival, and development, and respect for the child's opinion (Article 2 of Law Number 23 of 2002 in conjunction with Law Number 34 of 2014 concerning Child Protection. In Law Number 23 of 2002 in conjunction with Law Number 34 of 2014 concerning Child Protection, it is regulated that children who are victims of sexual violence must receive special protection (Article 59 of Law 23 of 2002 in conjunction with Law Number 34 of 2014). Based on the provisions of the articles formulated in part five of Law Number 23 of 2002 in conjunction with Law Number 34 of 2014, which regulates special protection for children and then comparing it with other articles in the same law, it can be understood that what is meant by special protection, in this case protection related to with children who are victims of sexual violence, protection is only given to children who have the right to protection from the state and society as stated in Law Number 23 of 2002 in conjunction with Law Number 34 of 2014 outside of part five.

The provision of special protection for child victims of sexual violence by Law Number 23 of 2002 in conjunction with Law Number 34 of 2014 is classified into several forms of protection depending on the type of sexual violence against children. In order to protect children's rights, a series of activities aimed at ensuring the growth and development of children must be carried out in a sustainable and directed manner. These actions are intended to realize the best life for children who are expected to be the next generation of the nation who are potential, resilient, have noble morals and are strong-willed to maintain the unity of the nation and state. This is stated in Article 20 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, that "In the implementation of child protection, various parties such as the State, Government, Regional Government, Community, Family, and Parents or Guardians are obliged and responsible for it."

According to Article 1 Paragraph 15 of Law Number 35 of 2014 concerning Child Protection, it is a form of protection received by children in certain situations and conditions to obtain a sense of security against threats that endanger themselves and their lives in their growth

and development. According to Law Number 39 of 1999 concerning Human Rights (HAM). The protection given to children is contained in Article 58 as follows:

1. Every child has the right to receive legal protection from all forms of physical or mental violence, neglect, ill-treatment and sexual harassment while in the care of their parents or guardians, or any other party responsible for such care.
2. In the event that a parent, guardian or caregiver commits any form of physical or mental abuse, neglect, ill-treatment and sexual harassment including rape and/or murder against a child who should be protected, then the punishment must be increased.

2. Responsibility for Criminal Threats of Stepfathers as Perpetrators of Criminal Acts of Sexual Violence Against Daughters

Rape is a sexual deviation committed by satisfy their desires and wills and harm others as victims. Rape does not only happen to people who are not known to the perpetrator, but can also happen to perpetrators who are people closest to the victim, one of which is a family member such as a father raping a daughter, a mother with her son, or an older brother with his younger brother, and so on.

The establishment of Law Number 35 of 2014 concerning Child Protection aims to protect children's rights which are one of the human rights, provide guarantees for the fulfillment of children's rights and the existence of non-discriminatory treatment, and guarantee the implementation of protection for children who are victims of criminal acts. Criminal acts of sexual violence against children committed by stepfathers can be subject to sanctions in accordance with the laws and regulations in force in Indonesia, especially in the Criminal Code (KUHP) and the Child Protection Law (Law No. 23 of 2002 concerning Child Protection which has been amended by Law No. 17 of 2016). Based on the Child Protection Law, perpetrators of sexual violence against children can be subject to severe criminal sanctions. If a stepfather commits sexual violence against a child, the sanctions that can be imposed include:

Article 81 reads: Any person who intentionally commits violence or threatens violence to force a child to have sexual intercourse with him or another person shall be punished with a maximum of 15 (fifteen) years' imprisonment and a minimum of 3 (three) years' imprisonment and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) and a minimum of Rp. 60,000,000.00 (sixty million rupiah). (1) The criminal provisions as referred to in paragraph (1) shall also apply to any person who intentionally commits trickery, a series of lies, or persuades a child to have sexual intercourse with him or another person.

Article 82 states: Any person who intentionally commits violence or threats of violence, forces, commits, tricks, a series of lies, or persuades a child to commit or allow indecent acts to be committed, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a fine of a maximum of Rp. 300,000,000.00 (three hundred million rupiah) and a minimum of Rp. 60,000,000.00 (sixty million rupiah).

Life Sentence or Death Penalty If the sexual violence committed has very detrimental consequences for the child or occurs under certain conditions (for example, repeated, or leading to rape), the perpetrator can be subject to the threat of life imprisonment or the death penalty, in accordance with Articles 76D and 76E of the Child Protection Law. Other Criminal Offenses in addition to sexual violence, stepfathers can also be subject to sanctions for other actions related to the unlawful treatment of children, such as abuse (Article 351 of the Criminal Code) or indecent acts (Article 289 of the Criminal Code).

3. Analysis of Decision 264/Pid.Sus/2023/PN. Lbp, Against Stepfather as Perpetrator of Criminal Acts of Violence Against His Stepchildren

Changing the Decision of the Lubuk Pakam District Court Number 264/Pid.Sus/2023/PN. Lbp., dated June 7, 2023, which was appealed, limited to the length of the sentence imposed, so that the full verdict reads as follows: Declaring that the Defendant REZA RIVAI has been proven legally and convincingly guilty of committing the crime of "Threats of violence against a Child to have sexual intercourse with him carried out by a parent continuously" as in the Primary Indictment of the Public Prosecutor; Sentencing the Defendant to 13 (thirteen) years imprisonment and a fine of Rp. 200,000,000.00 (two hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence of 3 (three) months. Determining that the period of arrest and detention that the Defendant has served will be deducted entirely from the sentence imposed. Ordering the Defendant to remain in detention. Burdening the Defendant to pay the court costs incurred at both levels of court, which for the appeal level is set at Rp. 2,500.00 (two thousand five hundred rupiah).

Reading the Cassation Application Deed Number 17/Akta.Pid/2023/PN.Lbp., made by the Clerk at the Lubuk Pakam District Court, which states that on August 30, 2023, the Defendant's Legal Counsel filed a cassation application against the Medan High Court Decision reading the Cassation Memo dated September 12, 2023 from the Defendant's Legal Counsel based on the Special Power of Attorney dated August 29, 2023 as the Cassation Applicant, which was received at the Lubuk Pakam District Court Clerk's Office on September 12, 2023.

Considering that based on these considerations, the decision of the *judex facti* in this case does not conflict with the law and/or statutes, the Defendant's cassation application is declared rejected. Considering that because the Defendant was convicted, he is burdened with paying court costs at the cassation level of Rp. 2,500.00 (two thousand five hundred rupiah).

Conclusion

Based on the results of the study related to **the Responsibility for Criminal Threats of Stepfathers as Perpetrators of Criminal Acts of Sexual Violence Against Girls (Study of Decision 264/Pid.Sus/2023/Pn. Lbp)** it can be concluded as follows:

1. The perpetrator A stepfather who commits sexual violence against his stepdaughter is considered a perpetrator who is criminally responsible for his actions. Sexual violence in this context involves coercion or abuse of the position of authority held by the perpetrator as a stepfather, who serves as the protector and caregiver of the child.
2. Violation of Child Protection in this case, the stepfather acted against legal norms and social ethics that prohibit sexual violence against children. In addition, this action is contrary to the purpose of the law which seeks to protect children from all forms of violence, including sexual violence, by prioritizing the best interests of *the child*. Criminal Threats Based on applicable law, sexual violence against children, as regulated in the Child Protection Law and the Criminal Code, can be subject to severe criminal penalties. These penalties can include long prison sentences, according to the type of sexual violence committed and its impact on the victim.

Suggestion

1. Improving Criminal Sanctions for Perpetrators of Sexual Violence against Children
Given the devastating impact on victims, there needs to be increased criminal sanctions against perpetrators of sexual violence against children, especially those involving close people such as stepfathers. Harsh penalties, including long-term imprisonment and psychological rehabilitation, can serve as a deterrent and deter other perpetrators.

2. In addition to imposing appropriate punishment on perpetrators, the legal system must pay more attention to the recovery of victims by providing access to psychological rehabilitation and social support needed to overcome the trauma caused by sexual violence.

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