



Investigators Obstacles in Child Molestation Cases

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Abstract: The purpose of this research is to identify the types of obstacles that investigators face when investigating child abuse. Empirical research approach was applied in this study. This study employs a qualitative methodology, purposive sampling, and descriptive qualitative analytic approaches. According to the findings of this study, the investigator's restrictions in processing instances of criminal acts of sexual abuse against minors are both internal and external. The internal barrier consists of people resources from investigators, the system, and the cultural side. Meanwhile, there are no witnesses to see, the victims are still minors, fees, and parents' inexperience of legal procedures. The execution of law enforcement investigations must boost confidence so that all types of hurdles to conducting investigations may be rapidly overcome. As a result, the inquiry is progressing as we all hoped. The investigation should be conducted in line with the appropriate legal procedure, particularly when dealing with cases of child abuse and updating legal knowledge for investigators, particularly those whose education is still insufficient.

Keywords: Obstacles; Investigation; Molestation; Child

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1. Introduction

The advancement of digitalization of information and communication technology in the form of social media exposes the public to a new reality, namely the mortal world viewable from the device/screen gadget's yet synced with real world life.¹ It is necessary to improve themselves precisely in the creation of increasingly advanced technologies.² Anyone can commit a crime. Everyone who commits a crime must accept responsibility for his actions. In truth, the crime of molesting is now perpetrated not just against adults, but also against children.³ To fulfill the demands of life, certain people frequently commit crimes and violations, in return this actions endanger some members of the community by performing illegal acts.⁴ Unlawful acts committed by children are caused by a variety of factors, including: a child who hangs out with negative influence friends will imitate his friends negative actions; a lack of religious understanding and parental supervision; and the negative influence of technology will facilitate obscene acts.⁵ If the perpetrators of crimes against decency are minors, this is obviously quite concerning because if children, as the nation's next generation, have been poisoned with bad attitudes, the quality of the young generation's resources as the nation's future will deteriorate.⁶

Molesting actions, whether perpetrated by adults or children, are one of the crimes that distress the society and occasionally occur. However, according to several sources, one of which being electronic media, sexual abuse of kids is becoming increasingly common. Many offenses of molestation have been prosecuted in court, but the criminals were not condemned to the maximum penalty under the law.⁷

Sexual abuse against children on a regular basis creates adverse conditions and instability in society. Sexual assault is essentially a breach of societal rules and

¹ Puluhalawa, M. R. U., & Husain, R. (2021). Body Shaming Through Social Media As a Digital Crime In The Era of Disruption. *Jambura Law Review*, 3 (1), 117

² Bakung, D. A., & Muhtar, M. H. (2020). *Determinasi Perlindungan Hukum Pemegang Hak Atas Neighbouring Right*. *Jambura Law Review*. 2 (1), 67

³ Zulfa, Amanda. (2017). *Peranan Penyidik Dalam Penanggulangan Tindak Pidana Pencabulan Terhadap Anak Tuna Rungu*. *Jurnal Poenale*. 5 (2), ii

⁴ Ismail, Dian Ekawaty., & Sarson, Mohamad Taufiq Zulfikar. (2021). Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes. *Jurnal Law Review*. 3 (3), 58

⁵ Andrisman, Tri. *Hukum Peradilan Anak*. (Bandar Lampung: Universitas Lampung, 2013), 11

⁶ Nashrina. *Perlindungan Hukum Pidana Bagi Anak di Indonesia*. (Malang: Rajawali Press, 2011), 236

⁷ Alhasni, Mohamad Rizky., Badu, Lisnawaty W., & Nggilu. Novendri M. (2019). *Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak Di Bawah Umur*. *Jurnal Legalitas*. 12 (2), 112

standards. As a result, offenders who are found to have perpetrated acts of sexual assault may face criminal consequences under Indonesian laws and regulations.⁸

Sexual assault against children is a serious crime that must be dealt with quickly. In order to overcome it, a criminal must be able to make the perpetrator a deterrence. Punishment is supposed to serve as a preventative measure, ensuring that there would be no more sexual harassment of minors by punishing criminals. If it is determined that the act of obscenity is a crime, it is difficult to find adequate proof, specifically at least two pieces of evidence, as needed by law. This is due to the fact that, in general, there are no witnesses other than the sufferer, and obscenity is a personal act since it is a shame. The investigator's task in conducting an inquiry to find evidence of sexual assault is to expose the crime of molesting. Investigation of offenders of illegal crimes of molesting against kids. This type of crime happens often, as evidenced by the mainstream media's extensive coverage of the crime. Some of these incidents were reported to the authorities, while others were not. As a result, the culprit must be prosecuted legally.⁹

Fear, humiliation, trauma, and a sense of powerlessness are all elements that contribute to unreported incidents of sexual abuse, and some victims and their family do not disclose it because of the danger posed by the perpetrators of sexual abuse. In addition to the victim's dread of his/her honor being revealed to the world, there are several other causes that might lead to mental stress or other physical problems. As a result, this crime is classified as an important issue in people's lives.¹⁰

Investigators conduct investigations, in this case, state police personnel of the Republic of Indonesia or some civil workers with particular investigative authority granted by law. Investigators as defined in Article 6 paragraph (1) letter b of the Criminal Procedure Code have authority in accordance with the law, which serves as the legal foundation for each, and carry out their duties under the coordination and supervision of investigators as defined in Article 6 paragraph (1) letter an of the Criminal Procedure Code. Investigators are obligated to follow the law when carrying out their tasks. Investigators, as defined in Article 6 paragraph (1) letter an of the Criminal Procedure Code, have the power to carry out their various tasks throughout Indonesia, particularly in their separate areas where they have been appointed in accordance with the law. If investigators, public prosecutors, community counselors, and or legal aid

⁸ Sitompul, Anastasia Hana. (2015). *Kajian Hukum Tentang Kekerasan Seksual Terhadap Anak di Indonesia*. *Law Jurnal*. Vol, 1 (2), 46

⁹ Wantu, Fence M. *Hukum Acara Pidana*. (Yogyakarta: Reviva Cendekia, 2011), 13

¹⁰ A.S. Alam dan Amir Ilyas. *Kriminologi Suatu Pengantar*. (Jakarta: Prenadamedia Group, 2018), 29

providers, as well as other officers, are not wearing a toga or official attributes while investigating cases involving children, child victims, or child witnesses (Article 22 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System), At each level of examination, the child must be provided with legal assistance and accompanied by a social advisor or assistant who is familiar with the applicable provisions.¹¹ The existence of these regulations ensures that all citizens have equal rights.¹²

Essentially, under Indonesian law, particularly the Criminal Procedure Code, law enforcers' ability to discover and investigate offenders is limited by the attitude of not arbitrarily detaining, examining, and punishing someone without clear evidence and procedures. A person who is highly suspected of committing a crime must be regarded as a human being as well.¹³ The efforts and roles of law enforcement officers are critical in eliminating all crimes. As one of the law enforcers, the police are required to be able to prevent, overcome, and eradicate illegal activities, particularly molestation.¹⁴ The right to life must be safeguarded by the state, particularly through the rule of law. That is why a strong rule of law safeguards human rights. Human rights and the rule of law are inextricably linked. One of the goals of recognizing and establishing the rule of law is to defend human rights, which means that individual rights and freedoms are acknowledged, respected, and protected.¹⁵

The various types of explanations above appear so complicated, law enforcement authorities to carry out investigations when a case involves a child, as explained above, that the psychological state of a child can be said to have not been able to provide various kinds of information that will be asked by an investigator to serve as a primary source of information, especially evidence. The same is true for evidence *via visum et repertum*. When comparing situations in Makassar City where parents refuse to accept a *visum et repertum* on their children, that will be performed by a doctor picked by the investigator. Law enforcement is delayed by the parents actions. In reality, the investigator conducts the inquiry in line with the terms of the legislation. But let us return to the victim, who was unable to collaborate in order to solve a crime that had occurred. As a result, it is critical that every competent person in the authorities undertakes a fast and impartial

¹¹ Sikki, Mahir. *Sekilas tentang Sistem Peradilan Pidana Anak*. <https://www.pn-palopo.go.id/index.php/berita/artikel/363-sekilas-tentang-sistem-peradilan-pidana-anak>. Accessed at April 10, 2022 at 21:50 Indonesia Central Time

¹² Wantu, Fence M., & Tome, Abdul Hamid. (2021). Dynamics of Village Head Election Arrangements. *Jambura Law Review*. 3 Special Issue, 101

¹³ Ismail, Dian Ekawaty., & Tamu, Yowan. (2009). *Upaya Perlindungan Hak-Hak Tersangka/Terdakwa Melalui Mekanisme Praperadilan Di Kota Gorontalo*. *Jurnal Mimbar Hukum*. 21 (1), 83

¹⁴ L, Aniza, Badu, Lisnawaty W., & Achir, Nuvazria. (2020). *Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online*. 13 (1), 33

¹⁵ Badu, Lisnawaty. (2012). *Euthanasia Dan Hak Asasi Manusia*. *Jurnal Legalitas*. 5 (1), 1

inquiry into any indicators of persecution, such as acts of torture or extreme discrimination, that occur within their authority.¹⁶

Things will happen from the implementation of the investigation to the stage of the inquiry that might impede the investigator's execution of the investigation. As is well known, an investigation is a sequence of activities conducted by law enforcement agents to uncover an act of breaching the law. According to data from the Gorontalo City Police, there are 22 incidents of incomplete cases in Gorontalo from 2020 to 2021. So, using this, the researcher wishes to investigate whether or not the investigator's investigation is in line with the Criminal Procedure Code, and what has been an impediment to them carrying out the inquiry.

An alarming trend in law enforcement and courtroom justice is that legal justice is no longer in sync with communal justice.¹⁷ According to Suwitno Yutye Imran, justice serves as a guide to discern between just and unjust behaviors, and aspects of justice may be found in the substance.¹⁸ The application and enforcement of the law are parts of the legal system that must be handled on a constant basis in order to actualize a legal position in a legal state that is favorable to the community, country, and state's interests.¹⁹

The responsibility of investigators in combating the crime of molestation must be expanded in order to prevent cases of sexual abuse of childrens by protecting victims and deterring offenders of sexual abuse of minors. The police force is one component of the criminal justice system that is at the forefront of crime prevention. When compared to other components, the police appear to have a larger influence. This institution is critical to the overall effectiveness of the criminal justice system.²⁰ Legal protection is essential because it is an endeavor to integrate varied demands in the association so that there is no conflict between rights, so everyone may enjoy all of the legal rights.²¹ The advantage is that it does not cause a conflict between society and the state.²²

¹⁶ Kasim, Towadi, M., N. M., Rumawi., R., & Tahir, S. A. (2021). An Indication of China's Policy towards Uighurs and its Implications by International Law Aspects. *Jambura Law Review*. 3(1), 66

¹⁷ Wantu, Fence M. (2013). Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata. *Jurnal Mimbar Hukum*. 25 (2), 208

¹⁸ Imran, Suwitno Y. (2021). The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments. *Jurnal Law Review*. 3 (2), 398

¹⁹ Soekanto, Soerjono. Pengantar Penelitian Hukum. (Jakarta: UI- Press, 2010), 11

²⁰ *Ibid.* Hal 125

²¹ Puluhalawa, Jufryanto., Towadi, Mellisa., & Swarianata, Vifi. (2020). Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck. *Jurnal Reformasi Hukum*, 24 (2), 197

²² Tijow, Lusiana. Perlindungan Hak Asasi Manusia Teriadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah. *Jurnal Legalitas*. 3 (2), 80

Furthermore, the challenges in this research essentially give birth to various types of perspectives, since it will address how the problems and hurdles experienced by investigators in conducting investigations into criminal crimes of sexual abuse against minors. As can be observed, the treatment of instances involving children and adults differs significantly. Not to add that particular rules govern children, such as the legislation on child protection, the juvenile justice system, child welfare, and other restrictions.

2. Research Method

The empirical research approach was applied in this article. According to Mukti Fajar, an empirical investigation is a social research or study. The goal is to examine the social realities that have transpired in light of the legal facts on the ground.²³ This study was done through interviews and firsthand observation of actual behaviors. While employing purposive sampling, a qualitative methodology, and descriptive data analysis approaches.

3. Types of Obstacles Investigators Face While Investigating Child Molestation

Of course, as an executor of the applicable legal laws, there are barriers in every case handled, but with cases of sexual abuse in minors, the hurdles are different than they should be since proof demands strong collaboration with both the victim and the offender. The offense of molestation Immoral activities, in this case sexual molestation, have essentially harmed societal order and caused parents to be concerned about allowing their children to go outside the house. With this heinous deed, parents may gain insight on their children's behavioural patterns, particularly in terms of their association. However, it is really unfortunate that sexual assault occurs not only by unknown persons, but also by intimate relatives.

As law enforcement personnel who also serve as investigators for all societal activities, the public's perception of the police, particularly police officers, has not improved in practically all regions of Indonesia. This problem appears to be unending. Even if the police continue to make attempts to change their unfavorable image, these efforts will not result in a positive picture of the police. As two parallel lines that can never meet, the more negative the image of the police, the more actions is in place to increase the image. The negative image will never go away, no matter how good the police are in preventing and combating crime in order to maintain public security and order. The findings of study or observation will be gained exclusively, virtually never inferred, from all the literature about police, both in developed and rural locations. Looking at this

²³ Fajar, Mukti & Achmad, Yulianto. *Dualisme Penelitian Hukum (Normatif dan Empiris)*, (Yogyakarta: Pustaka Pelajar, 2010), 153.

explanation, an investigator handling cases of illegal crimes, particularly sexual crimes, may encounter barriers and obstacles in the process of enforcing the law. According to the Head of Women and Child Protection Unit, several factors become obstacles in its implementation, including investigators' human resources, the victims being children, the suspect of molestation refusing to admit his actions, the lack of witnesses in the event of a criminal act occurring, and the limitations of forensic doctors and parents' awareness of the legal process carried out by investigators.²⁴ The government must restore order and peace in people's lives while also maximizing regional growth potential.²⁵

The numerous explanations provided above are relevant to the difficulties encountered by the police. According to Agil Widiyas, there are two types of barriers in the investigation: internal hurdles and external obstacles. Here is the explanation:²⁶

1. Internal Obstacles
 - a. Human Resource of Investigators

Human resources are undoubtedly important to the operation of the legal procedure being described. How can this be if the investigators do not comprehend the contents of the articles that will be used against the suspect, particularly in criminal activities where an investigator is necessary to understand the wording of Criminal Code article 290? Furthermore, inexperience in handling cases will be one of the barriers to the smooth operation of the legal process.

I believe comprehension of the legal foundation must be possessed by persons within the scope of the inquiry, because the ground for assessing the punishments to be handed begins during the investigation and investigative process. The danger arises when the case involving this obscenity involves persons who are well educated and are aware of the legal loopholes used by investigators. Because it is connected to the obscenity case, an investigator must truly comprehend the contents of the article that will be supplied to the suspect, so that in its implementation there is no trace that can be disputed the correctness of the article to be applied.

²⁴ Interview with the head of women and children protection unit Mr. Maikel Raidel. January 22, 2022. At 10:00 Indonesia Central Time

²⁵ Achir, Nuvazria, and Sri Nanang Meiske Kamba. (2021). The function of sharia-based Regional Regulations on Education and Social Services in the Regions. *Jambura Law Review*. 3 Special Issue, 16

²⁶ A Sampurna, gil Widiyas., Suteki. (2016). *Penyidikan Terhadap Anak Sebagai Pelaku Tindak Pidana Pelecehan Seksual Oleh Penyidik Unit Ppa Satuan Reskrim Berbasis Keadilan Restoratif Di Kabupaten Kendal*. *Jurnal Law Reform*. 12 (1), 153

b. Various-system related variables, including:

- The rules for investigating children that are specifically regulated within the police organization as the procedures for investigation in the juvenile criminal justice system law do not yet exist, because the existing rules and being guided by investigators are still related to general investigations, namely the National Police Chief Regulation Number 14 of 2012 concerning Investigation Management and Regulation of the Indonesian Police Criminal Investigation Unit Number 3 of 2014 concerning Standard Operational Procedures for Criminal Investigations.
- Because the training program to increase the ability of the criminal justice function is in the training sub-section of the human resources section and is specifically regulated in the program, there is no focus or specialization of activities on training services for women and children as a cadre of investigators.

c. Cultural Point of View

Women and Children Protection Unit investigators have been unable to create simple methods for dealing with cases involving children as perpetrators of criminal actions that proceed to the trial, since investigators still believe that dealing with children is the same as dealing with adults as perpetrators.

2. External Obstacles

a. The absence of witnesses

As we all know, a Witness is someone who can offer information for the purposes of investigation, prosecution, and trial about a criminal case that he/she has heard, seen, or experienced for himself. As a result, when no one see the victim being molested, it becomes difficult for investigators to discover and substantiate the illegal actions that have happened. According to investigators, there are occasionally witnesses who are scared to testify in court.²⁷

Witnesses are frightened to testify in court not just in situations of sexual abuse, but also in cases of persecution, murder, theft, and so on. Whereas, in general, witnesses are protected by laws and regulations, such as Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, which

²⁷ Interview with Gorontalo City Police Criminal Investigation Unit Investigator Mr. Rinto Prastowo. At May 17, 2022. At 11:00 Indonesia Central Time

strives to create a sense of security to every witness and/or victim in providing information in any criminal justice procedure.

b. The victims are still minor (children)

In the course of an investigation, reliable evidence from both the crime site and the offender and victim, particularly information from the victim of a crime, is required. If the victim of sexual violence is still classified as a minor, investigators will find it more difficult to carry out the initial investigation and investigation process in the process of seeking evidence from the victim himself, because children who are classified as minors are generally incapable of providing information. Not to mention whether the victim was traumatized by the experience or not. The evidence referred by the researcher's is mainly incorporated in Article 184, paragraph 1 of the Criminal Procedure Code, which states:

"Legal evidence is: witness testimony, expert testimony, letters, instructions and statements of the defendant"

According to the investigators in the case of sexual abuse at the Gorontalo City Police, it reached to the level of investigation where the process of seeking and obtaining evidence was in compliance with the terms of article 184 paragraph 1. One of our challenges is a case involving a minor about whom we all know and who has not been able to offer genuine information, where the child's knowledge will essentially be used as evidence.²⁸

c. Lack of Operational Funds

Following that, the researchers examined the presence of documented evidence in the continuing legal procedure, in line with the terms of the regulations in article 184 of the Criminal Procedure Code. One of the barriers to conducting investigations to gather evidence in the form of letters is forensic physicians. As a result, looking for various types of evidence incurs operating costs, which might impede our ability to conduct investigations, not just in cases of obscenity, but also in other situations.²⁹

d. Parents Inadequate Knowledge of Legal Procedures

²⁸ Interview with Gorontalo City Police Criminal Investigation Unit Investigator Mr. Rinto Prastowo. May 17, 2022. At 11:00 Indonesia Central Time

²⁹ Interview with Gorontalo City Police Criminal Investigation Unit Investigator Mr. Rinto Prastowo. May 17, 2022. At 11:00 Indonesia Central Time

We frequently face parents who do not understand legal procedures, so when there is violence within the family context, only discussion or mediation with the offender is carried out, and the perpetrator is left alone but accepts all kinds of agreement in the mediation carried out. Ignorance of legal processes within the scope of a criminal conduct will cause criminals to flee since they will not face consequences, which the researcher believes will have a deterrent effect on what they do.³⁰

For example, in the Makassar area, a case of parents' ignorance of the law occurred when their child was molested by an unknown person and when the investigator wanted to conduct an examination of the victim, in this case his child, where the victim would be subjected to a *visum et repertum* but was forced to reject it by the child's parents. The investigator must strive hard to persuade the parents to allow their kid to conduct a *visum et repertum*, which is a type of investigator's desire to gather evidence in the form of a letter as alluded to in Article 184 of the Criminal Procedure Code.

Some of the obstacles encountered by investigators that have been discussed above can give insight into the legal procedure that goes from investigation to court stage. Of course, in the face of some of these impediments, law enforcement does not simply stand by, but seeks ways to ensure that the illegal conduct progresses in accordance with the time and target that has been established. This conversation gives an awareness that children still require particular support, as this can provide opportunity for children to continue to carry out activities as they should even if they have previously been traumatized by acts of sexual abuse. The existence of total support and protection as a manifestation of the fulfillment of constitutional rights for all citizens in accordance with the legal assistance objectives. Because the heart of the constitution is a notion of the state that serves as the foundation and limits of the state administration system's configuration.³¹

Treating criminal cases against children is unquestionably different from addressing cases against adults; yet, handling cases against children is unique in that it is also governed by specific laws. Understanding of the process of handling children's cases, of course, there may still be some people who do not understand or understand, so that sometimes it gives rise to various assessments, even more fatal if there is a misjudgment that the handling of children, especially children in legal conflicts, get special treatment, and there are also those who believe that

³⁰ Interview with Gorontalo City Police Criminal Unit KBO Mr. Arif Ibrahim S. February 9, 2022. At 10:00 Indonesia Central Time

³¹ Ahmad & Nggilu, Novendri M. (2019). *Denyut Nadi Amandemen Kelima UUD 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution*. *Jurnal Konstitusi*. 16 (1), 791

children cannot be punished even though it is not that far, it's just that the handling process is specific.

4. Conclusion

Internal and external restraints of investigators in processing cases of criminal acts of sexual abuse against minors. The internal obstacles consists of human resources from investigators, the system, and the cultural side. Meanwhile, the absence of witnesses, the victims are still minors, fees, and parents' inadequate knowledge of legal procedures.

The implementation of law enforcement investigations must increase credibility so that all types of obstacles to investigating may be overcome rapidly. So the probe moves forward as planned. The investigation should be carried out in line with the necessary legal processes, particularly when dealing with cases of child molestation and updating legal knowledge for investigators, particularly those whose education is still insufficient.

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