



Law Enforcement of Incest Sexual Violence Against Biological Children Viewed from Criminology

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Abstract. *The increasingly complex and rapid development of society has led to more and more deviations in the distribution of one's sexual desires. One form of sexual deviation or disorder is incest. Incest is a sexual relationship committed by 2 (two) people who are still related or related by blood or marriage, where the average victim is a child. This study aims to answer two things, first, how is the regulation of the crime of incest sexual violence against biological children in terms of criminology? Second, how are the efforts of law enforcement against cases of incest sexual violence on biological children? The research method used is socio legal research because it aims to examine the perceptions and legal behavior of people that occur in the field. The results showed that cases of incestuous sexual violence against biological children that occurred in the city of Samarinda, East Kalimantan, were caused by the factor that the perpetrator did not have the ability to refrain from these deviant events, this is in accordance with the theory of social control in criminology. The efforts of law enforcers in dealing with the crime of incest sexual violence, especially law enforcers from the police and the prosecutor's office, have sought law enforcement both for the perpetrator and the victim, and carried out prosecution in accordance with applicable laws, both protection for the victim / child and imposition of punishment for the perpetrator. Three cases of incestuous sexual violence against biological children that occurred in Samarinda are subject to criminal sanctions in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.*

Keywords: *Incest, Sexual Violence, Criminology, Law Enforcement*

1. Introduction

In line with the increasingly complex and rapid development of society, more and more deviations are found in the distribution of one's sexual desires. One form of sexual deviation or disorder is incest. Incest is a sexual relationship committed by 2 (two) people who are still related or related by blood or marriage, the average victim is a child.¹ Incest is a form of sexual crime that can occur at any time and happen to anyone, which is very detrimental and disturbing and is still very taboo in society and is one of the violations of human rights, especially in children. A case that occurred in the city of Samarinda, East Kalimantan, a man initials P (67) who is a timber factory laborer who was proven to have committed the crime of incestuous sexual violence by sodomizing 2 (two) daughters aged 19 years and 16 years who were his own biological children for years, namely from 2012 to April 2019.² Several similar cases also occurred in the city of Samarinda. In 2020 in Samarinda City, N (55), who is a sand transport worker, committed the crime of incestuous sexual violence by molesting his own 6-year-old biological child repeatedly. These cases are examples of cases that occur within the family sphere, which is often referred to as incest. Incest from its definition is a marriage or sexual relationship committed by two people who are close

¹ Abu Huraerah, *Violence Against Children*, 2012, Nuansa Cendekia, Bandung, p.11

² <https://www.google.co.id/amp/s/m.merdeka.com/amp/peristiwa/kasusincest-ayahkepada-2-anaknya-di-samarinda-terungkap-dari-curhat-korban-keteman.html> / accessed on July 5, 2024.

relatives (in blood). According to Sawitri Supardi Sadarjoen, Incest is “sexual relations committed by couples who have strong / close family ties, for example, fathers to their daughters, mothers to their sons, or with fellow biological families.”³

Based on these cases, of course the child becomes a victim of incest sexual abuse, which will have an impact on the child's psychological and mental state. Therefore, the role of the state is needed to provide protection to children, especially in providing strict sanctions to the perpetrators of this incest. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection has regulated protection, but still the punishment is considered still light and not optimal in reducing the number of sexual violence against children.

Perpetrators of incestuous sexual crimes are rarely reported to the authorities for fear that they will bring shame to the family's good name and receive further violence from the perpetrator. This lack of legal protection for victims has left many incest cases untouched by the law. Therefore, the regulation of Incest sexual crimes must be reformed to punish the perpetrators of these crimes with more severe criminal sanctions and this regulation on Incest can provide a deterrent effect to the perpetrators in accordance with the norms that apply in society whether it has achieved justice for victims and can suppress or even eliminate Incest sexual violence in children. Because we can see the scope of Incest sexual crimes is very different from sexual crimes in general because of the special relationship in the family between the perpetrator and the victim.

Therefore, this paper discusses two things, namely first, how is the regulation of the crime of incest sexual violence against biological children in terms of criminology? Second, what are the efforts of law enforcement against cases of incest sexual violence against biological children?

2. Methodology

This research, to analyze the law which is seen as a behavior that exists in the lives of people who always interact and relate in social aspects, then this research uses socio legal research that examines the perceptions and legal behavior of people (humans and legal entities) that occur in the field.⁴

However, it also does not exclude the support of the doctrinal side on the grounds that this research will use a set of positive theories and norms. The type of study in this research is more descriptive, because it intends to describe clearly about various matters related to the object under study, namely Law enforcement against perpetrators of Incest Crimes in Children reviewed from criminology.

3. Discussion And Findings

a. Regulation Of The Crime Of Incestual Sexual Violence Against A Child

Violence is persecution, torture, or mistreatment. According to WHO (World Health Organization) violence is the use of physical force and power, threats or actions against oneself, an individual or a group of people or the community that result in or are likely to result in bruising/trauma, death, psychological harm, developmental abnormalities or deprivation of rights. Meanwhile, violence against children according to WHO (World Health Organization) is an act of mistreatment or mistreatment of children in the form of physical, emotional, sexual harm, care and exploitation for commercial interests that are real or not that can endanger health, survival, dignity or development, health, survival, dignity or development⁵

³ Sawitri Supardi Sadarjoen. 2015, Bunga Rampai Kasus Gangguan Psikoseksual, Refika Aditama Bandung, hlm 76

⁴ Sabian Utsman, Basics of Legal Sociology: Equipped with Legal Research Proposals (Legal Research), Yogyakarta: Learning Library, 2013, Cet. 3, p. 310.

⁵ Ferry Efendi and Makhfudi, 2009, Community Health Nursing, Jakarta: Salemba Medika, p. 80

Sexual violence is defined as a sexual act carried out by means of coercion in an unnatural and unwelcome manner, this method can be in the form of oral-genital, genital-genital, genitalrectal acts, squeezing breasts, exposure of sexual anatomy, and showing pornography which is usually carried out with psychological or physical pressure which is often interpreted as an act of rape.

The crime of sexual violence Incest is regulated in the Criminal Code in Article 294 paragraph (1), "Whoever commits obscene acts with his child, stepchild, foster child, child under his supervision who is not yet an adult, or with a minor whose care, education or custody is entrusted to him, or with his servant or subordinate who is not yet an adult, shall be punished by a maximum imprisonment of seven years". The objective element of Article 294 paragraph (1) is the person who commits acts against decency with his own child, step-child, foster child or adopted child who is not yet an adult, or with a minor whose care, education or custody has been entrusted to the perpetrator, and with a servant or subordinate who is not yet an adult.

Incest crime is not only by way of sexual abuse, but also coercion of sexual intercourse (rape), which in Article 294 of the Criminal Code has not been included. The inclusion of the term "intercourse" in the crime of incest can provide guidelines for the crime of incest, which is usually only charged with sexual abuse.

Currently, the criminal provisions for perpetrators of sexual violence incest on biological children before the enactment of Law No. 12 of 2022 on Criminal Acts of Sexual Violence are still using the criminal provisions referring to Article 81 of intercourse with children and Article 82 of obscene acts against children in Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on the Protection of Children and the Amendment to Law No. 23 of 2002 on the Protection of Children. Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection and lastly amended by Law No. 17 of 2016 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 on the Second Amendment to Law No. 23 of 2002 on Child Protection into Law and the criminal sanction lies in Article 81 paragraph (3), which is increased by 1/3 of the criminal sanction because the perpetrators of the criminal offense are parents.

The elements of the perpetrators contained in Article 81 paragraph (3) are parents, guardians, people who have a family relationship, child caregivers, educators, education personnel, officials who handle child protection, or carried out by more than one person together."⁶

b. Law Enforcement Against Incestual Sexual Violence Cases On The Birth Child

Incest sexual violence is a social reality in society that has recently increased. The occurrence of the crime of sexual violence Incest in the community shows a shift and deviation of moral values, religion, and customs held in social life.

Criminological theory can be used to analyze problems related to crime or the causes of crime. In essence, this theory seeks to examine and explain matters related to the problems of criminals and crime.⁷ In the theory of criminology there is a theory of social control, which is a theory that tries to find causes in the community where criminals come from.

Social Control Theory This theory is a theory that tries to answer why someone commits a crime. Social control theory views every human being as a creature with pure morals. So that everyone has the freedom to do something. Whether humans will obey the rules or break the existing rules. The chosen action is based on the social bonds that have been formed. This theory focuses on the techniques and strategies that regulate human behavior and bring it to adjustment or obedience to the rules of society."⁸

⁶ Andika Wijaya and Wida Peace Ananta, 2016, Emergency Sexual Violence, Jakarta, Sinar Grafika, p. 185. 185.

⁷ Anang Priyanto, 2012, Criminology, Yogyakarta: Ombak, p. 20-21

⁸ Ibid, p. 31

Incest sexual violence is a social reality in society that has recently increased. The occurrence of the crime of sexual violence incest in society shows a shift and deviation of moral values, religion, and customs held in social life.

Regarding this Incest sexual crime, the community plays a very important role in preventing a crime because Incest sexual violence and criminology are closely related. based on social control theory if the community fulfills or obeys the norms that exist in society, especially in blood relations which are closely related to religious norms and this is not allowed. And the community must play an important role in reporting incest crimes, it's just that what happens is that many incest cases are not reported, because they cause family disgrace and are afraid to report to the authorities.

In Criminology, the crime of Incest sexual violence against biological children is a crime which according to criminology, namely an act is prohibited and regulated in law, and the act is very detrimental and disturbing to society.

Based on data from the Samarinda City Resort Police (Polresta) there were 3 cases of incestuous sexual violence against biological children in Samarinda city during 2019-2021, namely 1 case in 2019, 1 case in 2020, and 1 case in 2021. Furthermore, the data obtained by the author at the Palaran Sector Police during 2015-2021 there was only 1 case in 2019, and the legal process was handled directly by the Palaran Sector Police in Samarinda City, which is the same case as the data in the Samarinda City Resort Police. The legal process regarding the 2 cases of incestuous sexual violence against siblings in 2020 and 2021 itself was handled directly by the Samarinda City Resort Police.

Table 1. Data on Violence Cases in Samarinda City in 2016-2022

Case	2016 Year	2017 Year	2018 Year	2019 Year	2020 Year	2021 Year	2022 Year
Domestic Violence	23	23	17	2	1	2	1
Child Abuse	9	9	5	4	2	2	3
Sexual intercourse Child	23	22	14	16	10	14	1
Child Molestation	5	6	5	1	1	3	2

Source: Chief of Police Samrinda East Kalimantan Province

Data from the Samarinda City Office of Women's Empowerment and Child Protection (DP2PA) revealed that in 2023 there were a total of 47 cases of violence against children with 68 victims. Of these 68 people, 45 of the victims were girls and 23 victims were boys with details as in the following table:

Table 2. There are 3 cases of incest crimes listed in table 1 with the following case chronology

No	Case Chronology	Law Enforcement
1	The biological father initials P (52) who committed sexual intercourse and threatened his two children, namely S and R, whose ages at the time of the incident both children were still minors aged 19 years and 16 years old who were his own biological children for many years, from 2012 to April 2019.	A conviction has been made
2	The biological father initials N (55) had sex with his 4th biological child aged 6 years old	A conviction has been made

No	Case Chronology	Law Enforcement
3	The convict with the initials S (42) said during the investigation that S had been proven to have molested and then had sex with his 14-year-old son K who was still a minor every night and whenever his mother was not at home. It has been proven by the existence of evidence, one of which is the result of the Visum et Repertum and evidence found at the scene.	A conviction has been made

Based on the results of the author's research on each investigator, it is found that the confession of the perpetrator, namely the perpetrator P (52), had sex with his two children because the child was considered not to understand what his father did and did not have the ability to report this and the victim S did have mental retardation due to trauma and the victim also spent more time at home because the victim did not go to school and the perpetrator also did not have a job which made this stimulate the perpetrator to have intercourse with his two children.

Then the perpetrator N (55) molested his son because his son was often naked in front of the perpetrator which made the perpetrator feel aroused by this. The perpetrator S (42) molested and sodomized the child because the perpetrator also knew that the child did not dare to report him. What made the perpetrator free to have intercourse with the victim was often close to the perpetrator because he did not think that his father would do this to him. This makes the perpetrator aroused to see his own child.

Based on the results of interviews that researchers conducted with several investigators at the Samarinda City Police, Briptu Dinda Arimby, Bripka Risa, and Briptu Herlinawati explained the process of law enforcement against cases of Incest sexual violence against biological children described based on the results of interviews the authors conducted, namely:

1. The detention and investigation of the perpetrator is carried out in accordance with applicable legal procedures in accordance with the legal basis for the investigation according to the provisions of Article 1 number 2 of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) which is an act of the Investigator (Police Officer or Civil Servant who is specifically authorized to investigate).
2. The imposition of punishment and articles on the perpetrator is very much in accordance with the applicable law. which is where the submission of the case will end up in the prosecutor's office to decide what punishment will be given.
3. Ensure protection for the child who is a victim of Incest sexual violence. Because it is also necessary to pay attention to the physical, psychological and recovery needs of victims by cooperating with social workers related to children and women under the auspices of the social service (Article 1 Paragraph 2 of Law No. 23 of 2002 concerning Child Protection) such as the Population Service, Women's Empowerment and Child Protection which is also side by side with doctors, psychologists / psychiatrists to understand the conditions experienced by children who are victims of Incest sexual violence by biological fathers.

In law enforcement efforts in Incest cases cannot be separated from the role of law enforcement officials, namely the police, prosecutors, and other law enforcement officials, because this case really needs special handling considering that this is within the scope of the family between biological fathers and biological children where the child who is the victim is still underage who is taken away by his own father. the need for protection for the child in the process of running the law that applies to the perpetrator of the crime.

c. Factors Influencing Incest Based On Criminology

1. Education and Economic Factors

The lack and absence of education in the three perpetrators which causes a lack of understanding of these actions / deeds. As for the economic factors of each perpetrator where poverty greatly affects the thinking that can trigger the incest perpetrator itself.

Because based on the facts found during the research that two perpetrators out of 3 cases found that two perpetrators did not have a permanent job, only a farmer and laborer. The low income and low standard of living and education of a person greatly affect the occurrence of criminal acts, it is based on the idea that a low standard of living leads to a low level of education as well, the lower the level of education of a person, the lower the knowledge that person has. This causes the perpetrator not to think in advance about the impact of the sexual violence committed against his biological child.

2. Sexual Deviation Factors

Based on the results of interviews in this case with Briptu Dinda Arimby from the Samarinda City Police, it was found that there was no trauma factor for the perpetrator, so the author concluded that the perpetrator had a sexual disorder, namely pedophilia, which could be caused by abnormal growth while still in the womb / children and also the dissatisfaction obtained from his wife which caused this to happen, namely Hypersex.

3. Due to Intention and Opportunity

Based on the facts found during the investigation that the three perpetrators committed acts of sexual abuse and intercourse with their children in a state of consciousness and had been carried out many times when his wife was not at home and the act was carried out anywhere while it was safe, even anywhere.

4. Victim Factor

Based on the results of the author's research on each investigator, it was found that the perpetrator P (52) had sex with his two children because the child was considered not to understand what his father did and did not have the ability to report this and the victim S did have mental retardation due to trauma and the victim also spent more time at home because the victim did not go to school and the perpetrator also did not have a job which stimulated the perpetrator to have sex with his two children. Then the perpetrator N (55) molested his son because his son was often naked in front of the perpetrator which made the perpetrator feel aroused by this. The perpetrator S (42) molested and sodomized the child because the perpetrator also knew that the child did not dare to report him. What made the perpetrator free to have intercourse with the victim was often close to the perpetrator because he did not think that his father would do this to him. This made the perpetrator aroused to see his own child.

5. Lack of Supervision / Parental Care

Lack of care for their children makes it unnoticed by parents and even their own mothers. That the facts in the field that some of the victim's mothers did not know that their children were victims of sexual violence from their fathers and even the perpetrator P (52) the wife / mother of the victim knew of the father's heinous actions, but this was not reported because she thought it would embarrass the family even, there were also perpetrators N (55) and perpetrator S (42) where the wife / mother of the victim did not believe and accused the victim of seducing her own father. then these actions can occur because there is no openness between the child and the mother, and the mother also cares less about the mental and trauma suffered by the child.

6. Environmental Factors

As for other factors causing incest sexual crimes in biological children, it can be seen from the environment, family and society. Because based on the three existing cases, that the cause of this Incest sexual violence is the community, even the family that Incest is a disgrace, and sometimes does not accept Incest victims to enter the environment. Because

it can be seen from the three cases that researchers found that their environment is less aware of this Incest case. And an environment that is quiet and rarely socializes also affects sexual violence that can occur in the family, this is based on the fact that a closed environment creates an advantage for the perpetrator of the crime in carrying out his actions without being known by anyone.

d. Obstacles In The Law Enforcement Process Against Incest Sexual Violence Cases

Based on the results of interviews that researchers conducted with the Samarinda City Police, Briptu Dinda Arimby's mother explained that in carrying out the law enforcement process there must be obstacles faced by every law enforcer who handles cases of Incest sexual violence against biological children. Which is where the criminal law enforcement process is closely related to criminology, because criminology can provide input to criminal law, especially why people commit crimes and factors.

Causes and law enforcement efforts against perpetrators. In making efforts to enforce the law on criminal acts of sexual violence against biological children, the police also experienced several obstacles, namely:

1. Because most incest cases are between families, so these cases are not reported to the authorities, so the existence of incest itself is difficult to find and follow up by the police, and also because of the lack of literacy which causes fear of dealing with the police or fear of complications and so on.
2. Because the perpetrator knows that he has been reported to the police, the perpetrator who has been reported will usually run away and hide in a certain area / city or somewhere far away before being arrested.
3. Investigators have difficulty in digging up information from victims because the average victim has experienced severe trauma. As a result, when extracting information from victims of biological children, it is very difficult to be questioned about the criminal acts of sexual violence they have experienced.
4. Then the obstacles in resolving cases of incest sexual violence against biological children because during the investigation and even in court the perpetrator did not admit to having committed a criminal act of sexual violence against his own child.
5. Barriers from factors / culture are also a problem because those who can be witnesses are the victim's mother or wife of the perpetrator and even blame the child for lying and saying that the child is the one who likes his own father. And there is also the wife / mother of the victim who already knows that she is silent because she is afraid of her husband / father of the victim, namely the perpetrator, this is one of the many obstacles that occur to investigators and becomes a hindrance in the law enforcement process.

As for the results of interviews conducted by the author to the Prosecutor's Office regarding the obstacles obtained in handling criminal acts of incest sexual violence against biological children, namely:

1. In dealing with victims of sexual violence, we must pay attention to the child as a victim because he is still underage, and psychologically the victim is also very shaken because the victim or the child is getting unfavorable treatment from his own parents who are the closest people to him. Therefore, the approach and handling process must be more extra in asking and seeking information from the victim.
2. The defendant did not confess, but this also did not become a major obstacle and obstacle because as long as the pre-prosecution was examined from the evidence, namely evidence and evidence, it was complete and fulfilling, it was sufficient to prove that a crime of incest sexual violence had occurred.

However, during the prosecution of the defendant there were no serious obstacles faced by the prosecutor in conducting a prosecution and also because basically each victim has a different approach which must use subtle language and must pay attention to the psychological level or trauma of the child who is a victim of *incest* sexual violence.

4. Conclusion

The criminal regulation of *Incest* sexual violence in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection involving children in it is regulated in articles 76D, 76E, 81 and 82 of Law Law Number 35 of 2014 concerning Child Protection. As for the relationship between criminology and *Incest* Perpetrators, which is in.

Looking for the causes of crime must first look for the factors that cause the perpetrators to commit crimes, then the theory of social control in criminology is closely related to the factors that cause *incest in* biological children, where the perpetrators do this deviant thing due to intention and opportunity. This intention and opportunity is a form of *personal control* and *social control* that exists in the three perpetrators, because the three perpetrators do not have the ability to refrain from these deviant events. Law enforcement efforts carried out by law enforcement officials must uphold the values of justice, legal certainty and social benefits. This law enforcement can be divided into two, namely broad and narrow. In a broad sense, the law enforcement process affects all legal subjects in all legal relationships. As for the narrow sense, law enforcement is defined only as the efforts of certain law enforcement officials to ensure that the rule of law functions properly. Where they have their respective responsibilities and duties. as for the inhibiting factors in the law enforcement process itself, namely first, legal factors, second law enforcement factors, third factors of facilities or facilities, fourth community factors and fifth cultural factors.

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