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## Stopping Investigations By Investigators On Persons Of Criminal Abuse At Ternate Police

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### ABSTRACT

This study aims (1) to find out whether the termination of the investigation of the perpetrators of the criminal act of obscenity at the Ternate Police Station has been based on the Criminal Procedure Code. (2) To find out what are the legal implications of stopping the investigation of the criminal act of obscenity at the Ternate Police. In the results of this study, the use of PERPOL No. 8 of 2021 needs to be understood as fundamentally challenging the principles of the criminal justice system, which is a sub- system that cannot be separated from the principle of legality, therefore, what must be a reference first in governance the method of implementing the termination of an investigation is the Criminal Procedure Code because the Criminal Procedure Code holds the principles contained in other legislation in this case is the Child Protection Law No. 17 of 2016 the second amendment to Law no. 23 of 2002 concerning Child Protection, the Criminal Code and diversion in Law no. 11 of 2012 concerning the Juvenile Justice System and such cases should be resolved in court, not at the investigation level even though the parties have withdrawn the report. Because if not, it will have a big impact on victims and the wider community. Then the victim must be given therapy to recover his psychology, given a new house as a place of recovery from social sanctions from society.

**Keywords:** Termination of Investigation, Obscenity, Children

### INTRODUCTION

In everyday life we may often and are used to hearing about crime. Especially in the complexity of today's rapidly developing society. Not only that, crimes are also often modified in such a way as to criminalize people. according to Van Hamel quoted by Eddy Hiariej. (1) Crime is not only a criminal act according to law, but especially a human behavior and a manifestation in society which is an inappropriate thing that threatens the peace of society. Some even say crime describes the bad qualities that exist in a person.

As a despicable act that can threaten the condition of public peace, it is definitely prohibited and will receive strict sanctions by law. In its development crime does not only occur in adults but also occurs in children such as sexual violence which includes rape and obscenity. Which, if we follow together lately the reality shows that children are not only positioned as objects of crime but are now starting to enter as subjects of the crime itself. It's very sad and concerning. cases of sexual violence against children are like an iceberg phenomenon that does not appear in public, but in reality there are many. If you pay more attention, cases of sexual violence against children are increasingly spreading in a number of areas and showing a very significant increase. As for rape and obscenity, it has been clearly regulated in the Book of Laws

Criminal Law or abbreviated as the Criminal Code Book Two Concerning Decency crimes. The Criminal Code has provided limits on acts that can be punished in accordance with the standards of decency crimes, specifically for crimes that occur in children are regulated in law no. 17 of 2016 concerning the second amendment to Law no. 23 of 2002 concerning Child Protection. Even in the trial process for cases of Rape and Obscenity it was carried out in a closed manner and was not of a public nature as was the case in other cases where the trial system was carried out openly.

As a gift given by God Almighty, and entrusted to parents, children are also the forerunners of a new generation who are successors to the aspirations of the nation's struggle and human resources for national development. As the next generation of the nation, who will be responsible for the existence of the nation in the future. As a wise country, it should protect and guard its young generation from all bad possibilities that will happen to them. Because the better the child's personality, the better the future life of the nation. Maintaining and protecting the dignity and human rights of children has become a necessity for the whole community. In the UN General Assembly in 1959<sup>3(2)</sup>, declared children's rights universally and encouraged all parties to recognize and fulfill them in the life of a nation and state in the world, and not vice versa, children receive inhumane treatment, discrimination is then not given special protection in society.

We find many cases of crimes against children, whether committed by children or adults. One of the crimes is the crime of obscenity. According to Adami Chazawi<sup>(3)</sup> Fornication is "all kinds of acts, whether committed to oneself or committed to others regarding and related to the genitals or other parts of the body that can stimulate sexual desire". The criminal act of obscenity as referred to in article 289 of the Criminal Code states that:

*"Whoever with violence or threats of violence forces a person to commit or allow obscene acts to be carried out, is threatened with committing an act that attacks the honor of decency, with a maximum imprisonment of nine years."*<sup>(4)</sup>

However, in the event that the act of sexual immorality is committed by someone against a child, this is regulated in Article 76 E of Law no. 17 of 2016 Second Amendment to Law Number 23 of 2002 concerning Child Protection which states that:

*"everyone is prohibited from committing violence or threats of violence, committing a series of lies, or persuading children to commit or allow obscene acts to be carried out."*

Criminal sanctions for violating Article 76 E are regulated in Article 82 paragraph (1) of Law no. 17 1 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning child protection namely, Anyone who violates the provisions referred to in Article 76 E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

From the formulation of Article 82 of Law no. 17 1 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning child protection jo. Article 76 E 35/2014 above, it appears that there is no obligation for this offense to be reported by the victim. Thus, the offense of obscenity is an ordinary offense, not a complaint offense. Because sexual abuse is an ordinary offense, the legal process against the suspect will continue even though the victim and family have forgiven the suspect (reconciled/report has been withdrawn).

The initial stage of examining a criminal act of obscenity is the investigative process. Based on article 1 point 5 of the Criminal Procedure Code "an investigation is a series of investigative actions to search for and find an event that is suspected of being a crime in order to determine whether or not an investigation can be carried out according to the method stipulated in this law".

From the description above it can be seen that the investigation is the first stage of the beginning of the investigation, but at the investigation stage the emphasis is placed on the act of searching for and finding an event that is considered or suspected of being a crime. Meanwhile, investigation is one of the methods of the sub-function of investigation that precedes other actions, namely prosecution in the form of arrest, detention, search, confiscation, examiner of letters, summons, follow-up examination, and submission of files to the public prosecutor.(5)

If from the results of an investigation an act or event constitutes a crime, the next process is to carry out an investigation and investigators based on Article 6 paragraph (1) are "officials of the Republic of Indonesia state police and civil servant officials who are given special authority by law." From the perspective of the criminal justice system, each has the authority to determine its law. Investigators can stop the examination and determine the law against the case and in the event that there is insufficient evidence or it is not a criminal case by issuing an Investigation Termination Order (SP3), so that the case does not progress to the prosecution level. The investigator's authority in terms of stopping an investigation is contained in Article 109 paragraph (2) of the Criminal Procedure Code as follows:

*"In the event that the investigator stops the investigation because there is insufficient evidence or the event turns out to be not a crime or the investigation is stopped for the sake of law, the investigator informs the public prosecutor, the suspect or his family about this."*(4)

However, in reality there were cases of underage child abuse in Kayu Merah Subdistrict, Kec. South Ternate, the City of Ternate which befell a 14 year old child. The perpetrator is an adult aged 20 years. the case was handled by the Ternate Police with Number: LP/107/B/VI/2022/Malut/Res-Ternate dated 24 June 2022. Initially the investigation process went well until at the stage of determining the suspect the family agreed to come and withdraw the report.

However, in the case above, it was not continued as it should be, because the victim's family withdrew the report so that investigators did not continue the investigation process to the prosecution stage. Based on the description above, the writer is interested in raising this problem in a scientific work in the form of a proposal entitled: "Termination of Investigations by Investigators Against Perpetrators of Obscenity Crimes at Ternate Police"

## METHODS

The type of research that the author will use is empirical legal research or research conducted in the field or at a research location, a place chosen as a location to investigate objective phenomena as occurring at that location, which is also carried out to compile a scientific report

## RESULTS

### **Termination of Investigation by Investigators of the Perpetrators of the Criminal Act of Obscenity at the Ternate Police Station Based on the Criminal Procedure Code**

There are two stages in the law enforcement process in the police through the Ternate Police Criminal Investigation Unit, from the results of Deny's interview with investigators, B.A. Sat Reskrim Polres Ternate, Investigation and inquiry. Article 1 Paragraph (1) of the Criminal Procedure Code (4) states that an investigator is an official of the Unitary State of the Republic

of Indonesia or a certain civil servant official who is given special authority by law to conduct an investigation. The limits of officials in the investigation stage are police investigators and civil servants.

According to the process of investigating criminal acts in general based on the Criminal Procedure Code, it begins based on police reports from the public as stipulated in Article 103 paragraphs (1) and (2) of the Criminal Procedure Code. The sides are as follows:

- a. Article 103 paragraph (1) states that reports or complaints submitted in writing must be signed by the complainant or complainant.
- b. Article 103 paragraph (2) states that reports or complaints submitted verbally must be recorded by the investigator and signed by the complainant or complainant and the investigator.

Thus there are sections of criminal procedural law that concern investigations as follows:

- a. Provisions regarding investigator tools.
- b. Provisions concerning knowing the occurrence of an offense.
- c. Examination of the scene.
- d. Summoning the suspect or defendant.
- e. Temporary detention.
- f. Search.
- g. Examination and interrogation.
- h. Minutes (search, interrogation, and inspection of the place).
- i. Delegation of cases to public prosecutors and returns to investigators for completion.

Regarding the law that must be obeyed, according to the author, is the Criminal Procedure Code as procedural law, which must be enforced, including the principles possessed by the procedural law, the obligations and powers they have and their limits.

So the investigation is the initial stage which must be the basis that the incident is true or not a criminal incident. Because it is a criminal incident, the investigation process continues at the investigative stage. Because an investigation is a series of investigative actions to seek and find an event that is suspected of being a crime in order to determine whether or not an investigation can be carried out according to the procedures regulated in the Criminal Procedure Code.

According to Syaiful Bakrhi(7), in general, it has been determined that every state police official is an investigator. This means that all employees of the state police, without exception, have been involved in investigative duties, which in essence is one of the many tasks specified in the Criminal Procedure Code, which are closely related to other tasks, namely as a whole. law enforcement efforts, to make a perpetrator of a crime, must be held accountable for his actions according to criminal law before the court. In order for them to carry out their duties properly, investigations must be carried out at the will of the legislators.

An Investigation Termination Order (SP3) is a letter issued by investigators, either the National Police or Civil Servant Investigators (PPNS) for stopping the investigation process of a criminal case. SP3 is also a letter of notification from the investigator to the public prosecutor that the investigation has stopped.

This was also conveyed by the PPA Sat Reskrim Ternate Police Briпка Deny Wibowo 11, the provisions regarding termination of investigation (SP3) are investigative powers regulated in the Criminal Procedure Code. The authority of the Investigator to terminate the case is based on the provisions of Article 7 paragraph (1) letter i of the Criminal Procedure Code.

According to the PPA Sat Reskrim Polres Ternate Briпка Deny Wibowo<sup>12</sup> at the time of this SP3 in the family using PERPOL No. 8 2021(8) and the ransom is given to the Attorney,

Legal and accepted by the Attorney. because the principle of legality can and the principle of benefit can. Because referring to this PERPOL and its benefits are received by the parties. When the SP3 was carried out there was a case held at the Polda, because we were summoned to the Polda to hold a case at the Polda, which was attended by all relevant elements as follows;

- a. Sat Reskrim Polres Ternate (represented by Dany as PPA Investigator),
- b. Perpetrators and victims,
- c. Propam,
- d. Propos,
- e. Malut Polda Discrimum (PPA North Maluku Police Field),
- f. IRWASDA (Regional Supervisory Inspector Polda North Maluku) and
- g. Head of Wasidik

Termination of the investigation of a criminal case must be based on and may not be other than the reasons stipulated in the provisions of Article 109 paragraph (2) of the Criminal Procedure Code.

*"In the event that the investigator stops the investigation because there is insufficient evidence or the event turns out to be not a crime or the investigation is stopped for the sake of law, the investigator informs the public prosecutor, the suspect or his family about this."*

Therefore, according to the writer's opinion, an investigator, both Polri and PPNS, in issuing an SP3 for investigating a case must be based on the reasons set out in the law, where the reasons for issuing SP3 for a case include the following:

1. There isn't enough evidence

If the investigator does not obtain sufficient evidence to prosecute the suspect or the evidence obtained by the investigator is insufficient to prove the suspect's guilt regarding such a crime, then the prosecution and trial process cannot proceed. This is because evidence is vital in the criminal justice process regarding the matter of evidence itself, it is regulated in Article 184 of the Criminal Procedure Code, namely "paragraph (1) a. witness statement; b. expert testimony; c. letter; d. instruction; c. defendant's statement.

Therefore, the verification process must fulfill the elements of the provisions regulated by the Criminal Procedure Code, because if the elements in the proof cannot be fulfilled, the process of determining the suspect, the prosecution, especially at the trial, cannot be carried out because there is an evidentiary system that includes having to be present in front of the trial by the prosecutor, the PH, and the judge in seeking the material truth of the ongoing criminal justice process.

2. The incident turned out to be not a crime

What is meant by a criminal event (it is known that an offense has occurred) is that the event is indeed a criminal event which includes:

- a. Caught red-handed (Article 1 Point 19 of the Criminal Procedure Code)
- b. Because of the Report (Article 1 Point 19 of the Criminal Procedure Code)
- c. Self-knowledge or notification or other means so that investigators know the offense has occurred, such as reading about it in the newspaper, hearing it on the radio or someone telling stories and so on;

3. The investigation was terminated by law:

- a. The case is *nebis in idem* (Article 76 of the Criminal Code)
- b. The accused passed away (Article 77 of the Criminal Code)
- c. The case has expired (*verjaring*) (Article 78 of the Criminal Code)
- d. Revocation of cases that are in nature complaint offenses (Article 75 and Article 284 paragraph 4 of the Criminal Code).

Normatively, termination of an investigation cannot be carried out other than for reasons set out in the provisions of Article 109 paragraph (2) of the Criminal Procedure Code.

According to Syaiful Bakhri<sup>13</sup>, if the investigator is of the opinion that the incident is not a criminal act, then the termination of the investigation can be terminated according to the law, in this case the Criminal Procedure Code which must be the first reference. Then it is notified to the public prosecutor and to the suspect or his family. With regard to the termination of the investigation, if the public prosecutor or other interested third party, may submit a pretrial to the district court which will examine whether or not a termination of investigation is legal. If the district court agrees with the investigator, then the termination of the investigation is valid, but if the district court has another opinion, then the investigation must be continued.

However, in practice the case of the criminal act of obscenity committed against a 14-year-old child was discontinued. Even though this offense is clearly not a complaint offense, if the parties have withdrawn the report, the legal process must continue until it reaches the stage of the Accusation and the trial is not even terminated, then it becomes a crime that has the qualifications of a complaint offense in accordance with what is stated in Article 75 and Article 284 paragraph (4) The Criminal Code is equated with the intent of other reasons set forth in the article 109 paragraph (2) of the Criminal Procedure Code regarding the meaning of being terminated by law.

This is as revealed by the PPA Sat Reskrim Polres Ternate Bripka Deny Wibowo S.H.<sup>14</sup> in the 2020-2022 period there were only 2 cases of sexual abuse which the investigation stopped in 2022. These cases were at the Investigation level which is referred to as the Termination Order. Investigation (SP2Lidik) with No: SK.Sidik/46.b/VIII/2022 Reskrim 30 August 2022 and a Warrant for Termination of Investigations conducted by the PPA Section of the Ternate Police Criminal Investigation Unit with No: SPPP/46/VIII/2022/Reskrim, 30 August 2022.

This was justified by the PPA Sat Reskrim Ternate Police Bripka Deny Wibowo<sup>15</sup> referring to the Republic of Indonesia Police Regulation Number 8 of 2021, hereinafter referred to as PERPOL No. 8 of 2021 concerning Handling of Crimes Based on Restorative Justice. With the material requirements in Article 5 "the material requirements as referred to in Article 4 letter a, include: a. does not cause anxiety and/or rejection from the public; b. does not impact social conflict; c. does not have the potential to divide the nation; d. not radicalism and separatism; e. not repeat offenders; f. not a crime of terrorism, a crime of state security, a crime of corruption, and a crime against people's lives."

Then apart from the material requirements stipulated in PERPOL No. 8 concerning Handling of Criminal Acts Based on Restorative Justice there are also Formal requirements which must be the basis for handling using Restorative Justice, which is set forth in Article 6 paragraph (1) to Paragraph (6) which reads:

1. The formal requirements as referred to in Article 4 b include:
  - a. Peace from both parties except for drug crimes; And
  - b. Fulfillment of victims' rights and perpetrators' responsibilities, except for drug crimes
2. Peace as referred to in paragraph (1) letter a. evidenced by a peace agreement letter and signature by the parties.
3. The fulfillment of the victim's rights and the perpetrator's responsibilities as referred to in paragraph (1) letter b can be in the form of:
  - a. Return thing
  - b. Compensate for losses
  - c. Replacing costs incurred as a result of criminal acts; and/or
  - d. Compensate for damages caused by a crime.

4. The fulfillment of the rights referred to in paragraph (3) is proven by a statement in accordance with the agreement signed by the parties(8).

In fact, according to the author, what should be the basis for taking action from the police, prosecutors and judges is the Criminal Procedure Code. because the Criminal Procedure Code is the principle of the rules governing the actions of the three institutions. Apart from the Criminal Procedure Code, the qualification for this criminal act of obscenity is also an ordinary offense which emphasizes that even though the case has been revoked by the complainant, the legal process must continue up to the trial stage. Because the crime of sexual abuse is a crime that violates decency which has a major impact on the growth and development process of children in order to support the ideals of the Indonesian nation.

Apart from that, the intent of obscenity as outlined by the legislators in Article 289 of the Criminal Code has elements of coercion as well as violence and threats of violence and attacks on honor (genitals or other body parts that can stimulate sexual desire). Then in the event that the act of sexual immorality is committed by someone against a child, this is regulated in Article 76 E of Law no. 17 of 2016 Second Amendment to Law Number 23 of 2002 Concerning Child Protection(9) which states that:

"everyone is prohibited from committing violence or threats of violence, committing a series of lies, or persuading children to commit or allow obscene acts to be carried out."

Criminal sanctions for violating Article 76 E are regulated in Article 82 paragraph (1) of Law no. 17 1 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning child protection namely:

Anyone who violates the provisions referred to in Article 76 E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

Differences in the arrangement of witnesses regarding obscenity regulated by the Criminal Code and Law no. 17 of 2016 Second Amendment to the Law Child. The Criminal Code provides for a criminal sanction of 9 years in prison and the Child Protection Act eight years and a maximum of 15 years. This clearly emphasizes that the child protection law gives obligations to all parties in this nation to protect children, care for them, care for them, develop children according to their abilities, talents and interests, prevent child marriage from occurring and provide character education for the sake of instilling character in children, and not vice versa, children are objects of sexual discrimination in this case sexual abuse. That is why the rise of cases of sexual crimes against children is of great concern in this nation, resulting in pressure from the public for the punishment of perpetrators of sexual crimes to be more severe and the provision of minimum criminal sanctions to be made tougher.

Thus that the child is fully given the right and not burdened with the obligation to accept and agree with the effects of sexual acts carried out by the perpetrator with the aim of restorative justice.

According to Arif Gosita(10) Child protection law is a law (written or unwritten) that guarantees that children can properly exercise their rights. Bismar Siregar(11) also emphasized the legal aspects of child protection, more focused on children's rights which are regulated by law and not obligatory, bearing in mind that legally (juridically) children are not burdened with obligations.

This shows that the inconsistency of investigators in enforcing the procedural law as part of non-compliance with the law which clearly regulates the mechanisms and procedures that are fundamental in the criminal justice system, especially in SP3, the conditions for which the author has conveyed in the description above

## DISCUSSION

### Implications of Termination of Investigation for Perpetrators of Obscenity Crimes

According to the PPA Sat Reskrim Ternate Police Bripka Deny Wibowo<sup>20</sup> PERPOL No. 8 of 2021 is indeed not a law, but yes it is a regulation of the Republic of Indonesia Police which only regulates internal Police Institutions which are used as a guide in carrying out tasks to provide restorative justice to the parties to a case. although the position of PERPOL No. 8 of 2021 which is lower than the law can be used for demands for the development of social dynamics that occur in society.

According to the author, the investigators did not pay close attention to Lex Skripta and carefully to Lex Certa, how the limitations were also given in Article 75 of the Criminal Code which provides an explanation of the Criminal Act of Complaint and only in Article 284 paragraph (4) of the Criminal Code which clearly states the crime of adultery which is a qualification for criminal complaints. Meanwhile, the criminal act of obscenity has the qualifications as an ordinary offense which emphasizes that the legal process cannot be stopped even though the victim has come and revoked the report and except for no criminal complaints which can only be stopped, the legal process must be stopped quickly. This is because the criminal act of complaint places more emphasis on personal losses that arise as a result of the criminal incident.

According to Eddy Hiariej the division of offenses into ordinary offenses or *Gewone* offenses and complaint offenses or *Klach* offenses has an important meaning in the judicial process. most of the offenses in the Criminal Code are *Gewone Delic* meaning that to carry out the legal process against these cases no complaint is needed. Therefore, the legal process for perpetrators of criminal acts of obscenity, especially those committed against children, must continue with the process all the way to court.

However, in practice, according to the information submitted by the PPA Sat Reskrim Ternate Police Bripka Deny Wibowo, the parties signed the peace letter and came to the Ternate Police to withdraw the report with the agreement in the peace letter as follows:

- a. The perpetrator will not repeat his actions for the second time;
- b. The perpetrator was willing to pay for the victim's school until college.

On the grounds of restorative justice as outlined in PERPOL No. 8 of 2021 which has written the description above, investigators are holding a third case with an agenda to stop the investigation.

Even though PERPU No. 1 of 2016(9) was issued by the President of the Republic of Indonesia concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection was issued based on the following reasons:

- a. That the state guarantees the child's right to survival, growth and development as well as protection from violence and discrimination as stated in the 1945 Constitution of the Republic of Indonesia;
- b. Whereas sexual violence against children is increasing from year to year and threatening the strategic role of children as the next generation for the future of the nation and state, so it is necessary to increase criminal sanctions and take action against children by amending Law No. 23 of 2002 concerning child protection as amended by Law no. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning Child Protection.

Thus the authors argue that investigators do not understand the fundamental basis of PERPU No. 1 of 2016 being issued. Because the results of the peace agreement did not



immediately eliminate the trauma that was then experienced by the victims. Because in essence children cannot protect themselves from various actions that cause harm to the mental, physical and social in various fields of life and livelihood. So the child must be assisted by others in protecting himself, considering the situation and conditions, especially in carrying out the process of investigation and investigation towards the judicial process later which then makes the child become a stranger to himself(12).

According to Maidin Gultom(13), children need to get protection from misapplication of laws that apply to them which cause mental, physical and social harm. Child protection in this case is called legal/juridical protection, as it is known that law is a series of regulations regarding the behavior of people as members of society, and the purpose of the law is to establish safety,(14) happiness and order in in society. Each Community members have various interests, so that community members in fulfilling these interests enter into relationships that are regulated by law to create balance in people's lives and if someone or several people violate the law, a balance will be shaken, because violations of the law can cause losses. for the parties. To re-create balance in society, criminal sanctions are imposed, then these criminal sanctions become the final *Ultimum Remedium* sanctions for perpetrators who violate them.(15)

Considering that the Peace Agreement contained in the Peace Agreement<sup>25</sup> states that "The Perpetrator Will Not Repeat His Actions for the Second Time" is a sanction that is not strict and inconsistent with the Doctrine and objectives of the criminal law itself, this Peace Agreement makes criminal law not a weapon ultimate *Ultimum Remedium* and is only a mere warning that does not have a deterrent effect on the perpetrators.

Even though the crime of decency, in this case sexual abuse of children, is a crime that is clearly stated in Book II of the Criminal Code and Law no. 17 of 2016 Second amendment to Law no. 23 of 2002 concerning Child Protection in articles 289 and 76 E then the sanctions are regulated in article 82 paragraph (1) that the perpetrators should be given appropriate punishment in accordance with the actions committed, not even given restorative justice.

In line with Hwian Chisristianato(16), the fourteen crimes of obscenity in the Criminal Code and the Child Protection Law present aspects that emphasize that they must be avoided as early as possible. This is because of regulations regarding the crime of obscenity as well as links to possible obscenity within family and community relations in general. This means that the regulation of sexual abuse in the Criminal Code and the Child Protection Act is more preventive in nature with the aim of minimizing the occurrence of sexual abuse crimes and even other crimes of decency.

This is according to the author's opinion that understanding of the Crime of Obscenity, especially in children, must be owned by everyone, especially by investigators considering the many cases of sexual abuse in children emphasizing how the functions and duties of the state are in providing protection to children. Because basically the act of sexual immorality is an exploration of the genitals or parts of the body that are very sensitive to other people's sexual stimulation in order to get sexual satisfaction(17) The act of pulling out is very different from rape which requires sexual intercourse(3), molestation is enough to explore certain parts of the victim which are very sensitive or can cause sexual stimulation, such as holding the breasts, patting the buttocks, groping the genitals, and actions that stimulate sexual desire, moreover the victim in this case was a child who was only 14 years old according to Bripka Deny Wibowo.

Thus, the authors do not agree on the second point of the peace agreement which states that "The perpetrator is willing to pay for the victim's school until college. According to the opinion of the First author, that compensation sanctions are civil sanctions that arise due to the fulfillment of demands for the Defendant in return for money for being arrested, detained,

demands because of claims that were tried for no reason based on the later law. regulated in article 1 of the Civil Procedure Code. Therefore, fundamentally it has signed with the principles in the criminal law itself even though there is a combination of criminal and civil sanctions, it does not mean that if the fulfillment of that right has been fulfilled then the investigation, prosecution and trial process will be stopped even though the loss sanction has been fulfilled, the judicial process must continue.

Second, that Law No. 11 of 2012 has provided a limit for diversion in article 7 which can only be carried out by diversion, a criminal case that carries a sentence of under 7 years, while in the statement submitted by Briпка Deny in this obscenity case the threat is 15 years in prison based on Article 76 E whose sanctions are regulated in article 82 paragraph (1) of the child protection law. According to Adami Chazawi(18)(19) in the juvenile justice system according to Law no. 11 of 2012 requires diversion in every handling process; at the level of investigation, prosecution and examination level at the juvenile examination trial, with the provisions that only apply to criminal acts punishable by imprisonment under seven years and are not a repetition of a crime (Article 7).

Thus it is certain according to the author, that the investigator in this case did not pay attention in advance to the protection of rights as:

- a. There are no attempts at medical rehabilitation and rehabilitation both inside and outside the institution during the recovery of the victim's psyche apart from being accompanied by a psychologist as well as being accompanied by a clergyman in accordance with the beliefs and beliefs held by the victim to help victims of criminal acts of obscenity who experience hysterics by filling their faith so that they will be more able to accept what happened to them as a result of this act of obscenity.
- b. There is no social rehabilitation that should be provided by the perpetrator, in this case a new residence (temporary residence) for victims of sexual abuse to relieve stress and trauma resulting from the incident. Because in the peace agreement it was only stated 1. The perpetrator would not repeat his actions for the second time and the perpetrator was willing to pay for the victim's school until college. what should also be included is the temporary residence of the victim to carry out recovery from the psychic disturbances that will be experienced by the victim. Not to mention that this event was already known by the community where the victim originally lived, which of course later was told by the community that the victim had experienced sexual harassment which then triggered and restored the victim's traumatized condition as it was when the crime occurred. Adhere to what has been mandated by Article 5 paragraph (1) letter j of the Law on Witness and Victim Protection in relation to the victim's right to obtain a new place of residence with the consideration that if the victim's safety is very worrying then the provision of a new residence for the victim will be given so that the victim can continue his life without fear.

According to Nur Afdhaliyah et al.(20), compensation in the form of acknowledgment made by this perpetrator has been conveyed, but the material is felt to be not comparable to the suffering experienced by the victim in the form of material compensation in the form of restitution, it is necessary to fulfill it because it will reflect the perpetrator's responsibility for the crime of obscenity. what he has done in the form of giving punishment in the form of compensation to the victim and the victim's family. Thus, the guarantee of protection for victims of criminal acts and especially for victims of decency crimes.

The absence of fulfillment of the rights of victims will of course have good and bad implications for the new legal order. Because according to Aulia Bella(21) the implications are everything that has been produced by the policy formulation process. In other words,

implications are the consequences and consequences that arise with the implementation of certain policies or activities.

So of course according to writing will have implications that are not effective in stopping the investigation which will be described as follows:

a. The implications of using PERPOL No. 8 of 2021 Concerning the Handling of Criminal Acts Based on Restorative Justice will form a legal situation and customary practice of using authority that is not based on what the legislators aspire to in this case is the Criminal Procedure Code, then what will happen later in institutions, especially institutions referred to as part of the criminal justice sub-system, in order to restore the victim's original condition, the steps for using restorative justice can be used even though they have ineffective implications in the order of life as long as their authority is regulated through Policy Regulations as outlined in the internal institutional regulations even though its nature is only Regealing and cannot challenge the law.

b. The implications of using PERPOL No. 8 of 2021 concerning the Handling of Crimes Based on Justice

This restorative will be assessed as not having harsh, firm and preventive sanctions for perpetrators of criminal acts of sexual abuse of children. Then it will cause public distrust of law enforcers because they are considered to be resolved only by agreement of the parties with an acknowledgment that is not necessarily carried out by the perpetrator, because it is considered not to have a deterrent effect. Even though the qualification of this crime is a crime that although and should be resolved at the judicial level, not at the investigative stage. thus the implications for the wider community, especially perpetrators of obscenity crimes, find it easy and easy to get away with the actions they have committed. then of course in the future it will definitely have the potential to bring about new events similar to this event.

c. The implications of using PERPOL No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice do not pay attention to the social impacts that arise in the future when the victim meets the perpetrator or hears directly, in the victim's social life environment that is told by the community around the victim, about the incident experienced by the victim thus, trauma and psychological problems will arise as a result of the shame experienced by the victim

## CONCLUSION

1. From the results of the research and elaboration that the author has described in the first problem formulation, it can be concluded that PERPOL No.8 of 2021 Concerning Handling Criminal acts based on restorative justice cannot be used as a basis by investigators in stopping investigations into cases of criminal acts of sexual abuse of children.
2. From the results of the research and discussion that the authors have described in the second problem formulation, it can be concluded that the crime of child molestation is an ordinary offense, not a complaint offense, therefore, the case should have reached court. Because, if not, it will have a bad impact not only on the victim but on the wider community and has the potential for similar cases to occur because there is no deterrent effect for the perpetrators.

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