

Legal Protection for Children as Victims of Sexual Crime: Between Challenges and Expectations

Rasdi

Faculty of Law, Universitas Negeri Semarang, Indonesia

Email: mr.rasdi@yahoo.com

Abstract— Children are the budding, potential, and younger generation to succeed the ideals of the nation's effort to have strategic roles, special characteristics and traits that they must be protected from all forms of inhuman treatment, abuse and discrimination leading to violations of children's human rights. The fact is found in the field that there is the rising violence against children, one of which is sexual crime. The issuance of Law Number 35 of 2014 on Amendment to Law Number 23 of 2002 on Child Protection, emphasized the serious demand of the State/government to protect children with the imposition of criminal sanctions and fines by including the minimum provisions for perpetrators of crimes against children, especially sexual crimes aimed at providing a deterrent effect on the offenders. This article presents the legal protection of children as victims of sexual crimes: between challenges and expectations. This paper indicates that in terms of regulation, the assurance of legal protection of children by the state have been carried out strictly, however, due to the influence of various factors, the field practice still encounter many challenges and is expected that it is necessary to increase support from various parties in the future of which goal in achieving child welfare can be materialized.

Keywords— *Children; sexual crimes; legal protection*

I. INTRODUCTION

In the dictum of Law Number 35 of 2014 on Child Protection it is emphasized that the Unitary State of the Republic of Indonesia ensures the welfare of every citizen, including the protection of children's rights which are basic human rights. Furthermore, it is also emphasized that children as budding, potential and as well as the next generation of the nation has a strategic role, special characteristics and traits, thus, it must be protected from all forms of inhuman treatment leading to violations of human rights. This is in line with the provisions of the 1989 Convention on the Rights of the Child that the member countries have accepted, including the Republic of Indonesia and has ratified the convention with Presidential Decree No. 36 of 1990 that it becomes the Indonesian Government's obligation to implement the provisions of the convention.

The Convention on the Rights of the Child contains the general principles of child protection as quoted through Law Number 35 of 2014 on Amendment to Law Number 23 of 2002 on Child Protection, which includes non-discrimination, the best interests of children, survival and development as well as respect of children participation. According to the issuance of the Law on Child Protection, the government actually intends to ensure the protection of children's rights in various aspects of life that child welfare can be achieved, even though the current conditions are still far from expectations. In reality, there are still many cases of violence against children as the MOS (Student Orientation Period) Student abuse at Taruna Indonesia Senior High School in Palembang of which WK (14) and the death of DE (14) were revealed by KPAI (Indonesian Child Protection Commission) Chairperson Retno

Listyarti (Liputan6.com/Nefri Inge, July 18, 2019 at 05.00 am).

This paper will answer the question: What is Legal Protection for Children as Victims of Sexual Crimes, Between Challenges and Expectations?

This paper presents that the serious efforts of the state/government in providing child protection, including children as victims of sexual abuse by issuing various instruments of laws and regulations and the establishment of supporting institutions as well as other facilities and infrastructure have provided real expectation for the crystallization of children's welfare, despite the oncoming challenges must be encountered even more severely as the rising emergence of many trigger factors related to the problem of sexual violence against children.

In order to reach the conclusions above, this paper is organized as follows. Part B is Discussion, B.1 will discuss Child sexual abuse. Section B.2 will explain the forms of protection for children as victims of sexual abuse. In this section, we will also denote the expectations and challenges. Part C is Closing, contains conclusions about the results of the study and section D provides bibliography.

II. CHILD SEXUAL ABUSE: HOW INDONESIAN REGULATIONS PROVIDE A PROTECTION FOR CHILDREN?

In Article 1 Paragraph (1) of Law No. 35 of 2014 on the child protection it is stated that the child is one who has not yet reached 18 (eighteen) years old, including unborn child. Furthermore, Article 1 Paragraph (2) of the Law stipulates that child protection is all activities to ensure and protect children

and their rights that they can live, grow, develop and participate optimally in accordance with human dignity and respect, as well as have protection from abuse and discrimination. The purpose of establishing a law on child protection is to protect children from all forms of physical, emotional, social and sexual abuse, negligence, harmful acts, economic and sexual exploitation as well discrimination due to economic, political, religious, social, and cultural and parental backgrounds that children's rights to live, grow, develop and participate optimally have protection from abuse and discrimination in order to materialize quality, moral and prosperous Indonesian children (Saraswati, 2015: 26).

Sexual abuse/crime in children is defined as an act of coercion to have sexual relations or other sexual activities committed by adults against children, whether with abuse or not, which can occur in various places regardless of the culture, race and level of society. Victims can be boys or girls, but in general it is more common in girls (Ferry, 1997: 2).

Lately, the community was very astonished by the emergence of sexual crime/abuse (rape) against 9 (nine) children by a child predator, a welder named Muh Aris (20) from Mengelo Hamlet, Sooko Village, Sooko District, Mojokerta Regency, East Java as disclosed by a Member of the Indonesian Child Protection Commission, Jasra Putra. Muh Aris committed a depraved act since 2015 and was only arrested by the police on October 26, 2018. On July 18, 2019, Aris was convicted by the Surabaya High Court (after making an appeal), as he was proven to have been committing a criminal offense by forcing a child into intercourse with a sentence of 12 (twelve) years in prison and a fine of Rp.100,000,000 (one hundred million rupiahs) for 6 (six) months confinement and an additional sentence in the form of chemical castration (Republika.co.id, August 29, 2019).

Based on data from the Office of Women's Empowerment, Child Protection and Population (DP3AK) in East Java, there were 67 (sixty seven) children in East Java who suffered from abuse until June 2019. The types of violence perpetrated against children include physical, psychological, sexual violence, exploitation, negligence to human trafficking. It was also reported that the most violence occurred in sexual violence against women and children in Surabaya, East Java (liputan 6, July 26, 2019, at 01.00 pm)

Children as victims of sexual abuse will suffer affliction and tremendous negative impacts, in physical, psychological, social and moral ones. Children will go through traumatic and even prolonged depression, and result in the destruction of the child's future. Such things indeed cannot be tolerated or allowed because children as God's mandate, the next generation of the nation, must be guarded and protected from all forms of abuse and other immoral acts. The Government/State, society and parents are jointly responsible for the crystallization of the child protection from all threats of abuse that the purpose of children protection is the crystallization of children's well-being.

B.2. A form of protection for children as victims of sexual violence

According to Ivo Noviana (2015: 16) stated that sexual violence against children is unlimited to sexual relations, but includes other acts leading to sexual activity against children, such as: touching the child's body sexually,

whether the child with clothes or not; all forms of sexual penetration, including penetration into the child's mouth using objects or limbs; make or force the child to engage in sexual activity; intentionally engage in sexual activity in the presence of a child, or fail to protect and prevent the child from witnessing sexual activity by another person; making, distributing and displaying images or films containing scenes of children in indecent poses or acts; and exposing children in watching pictures, photos or films that exhibit sexual activity. Based on the scope of violence against women, including child abuse can occur in the household (domestic violence); in the common people/public community and in the state domain (Sulaeman and Homzah, 2019: 97). In simple terms, sexual abuse or crime can occur either within the family as often referred to as familial abuse of which perpetrators are those who are close to the victim, and outside of the family are called extra familial abuse of which perpetrators are those outside of the family, such as school, playground, tourist attractions, public transportation, and other places.

Forms of sexual violence against children can include such acts: (Noviana, 2015: 18) Nudity (committed by adults); 2) Disrobing (adults taking off clothes in front of children); 3) Genital exposure (committed by adults); 4) Observation of the child (when bathing, naked, and defecation); 5) Kissing children wearing underwear; 6) Fondling (groping the victim's chest, genitals, thighs, and buttocks); 7) Masturbation; 8) Fellatio (stimulation of penis on victim or perpetrator himself/herself); 9) Cunnilingus (stimulation of vulva or vaginal area on victim or perpetrator); 10) Digital penetration (in anus or rectum); 11) Penile penetration (in vagina); 12) Digital penetration (in vagina); 13). Penile penetration (in anus or rectum); 14) Dry intercourse (stroking the perpetrator penis or other genital area, thigh, or buttocks on victim).

Based on the fact that various forms and types of sexual violence against children increasingly spring up as mentioned above, thus it requires firm and fast actions from various parties to protect children from all possible violence against children, especially sexual abuse. Every child has the right to protection. Efforts for child protection must be given as a whole, thorough and comprehensive, not in favor of a faction or group of children. The efforts made are carried out by considering the best interests of the child by considering their right to live and develop, and still respect their opinion. Child protection means the crystallization of justice in a society. This is in line with the opinion that "child protection is essentially to protect the family, community, nation and state in the future" (Noviana, 2015: 20).

The forms of protection that can be given to children as victims of sexual abuse include: a) the provision of restitution and compensation to recover losses suffered by victims both physically and psychologically and reimbursement for costs incurred as a result of victimization; b) Counseling is given to children as rape victims who suffer from trauma by rehabilitation to restore the original psychological condition of the victim; c) Providing medical services/aid to victims who suffer medically from criminal acts such as rape, which results in physical pain; d) Provision of information as the victim's right regarding the development of the case and the judge's verdict; e) Protection by family and community, by entertaining, encouraging and motivating,

rather than contempting (Noviana, 2015: 24-25). Bambang Waluyo (2018: 73) also briefly affirmed in his opinion that children as victims receive special protection which includes rehabilitation, protection from reporting identity, providing safety assurance and accessibility to obtain information about the progress of the case. Further in Law No. 23 of 2004 on the Elimination of Domestic Violence as well as Law No.13 of 2006 on Witness and Victims Protection, including children as victims of sexual abuse, receive protection in the assured rights of victims to receive rehabilitation, compensation, restitution, health services, legal assistance, counseling, and spiritual guidance.

Learning from the fact that providing child protection alone does not ensure a complete and comprehensive resolution of children's problems, including child sexual abuse, therefore other effective actions are still needed to tackle the violence that it does not become more rampant in the community as number of victims of innocent children does not reduce but instead increasing the from time to time. These preventive measures can be taken for reproductive health education and sexuality through school or family education, sustainable religious understanding both at school and at family and supervision to prevent misappropriation in information technology such as the rise of pornography on the internet that drives the occurrence of sexual crimes in Indonesia. The rapid flow of information technology that facilitates all the interests of the community cannot be tightly restricted, leading to much non-educational information that children can receive and access, whether through gadgets or other means that can be quickly spreading and without being monitored by parents, children can freely see various non-educational content and it has the effect of influencing behavioral attitudes and even they apparently want to try what they see, including contents of violence, pornography and so forth. And this is a challenge that always comes at any time that requires and have to be immediately addressed continuously and synergistically between the government, society and parents as well as observers of children's cases. As in the industrial era 4.0 even welcoming the industrial era 5.0 in Indonesia, where all human activities have been facilitated by the fast and unstoppable advancement of digital technology and information flow that it has a major influence on all aspects of human life, which practically cannot be controlled, including negative influences that are detrimental for the lives of children.

The comprehensive protection policy for child's rights from time to time is always changing and developing in accordance with the progress and changing needs of the child itself as well as many influences in the development of information technology that demands the regulation of all community needs by the strict institutional instruments and laws and regulations. The stipulation of the Child Protection Law by the government through Law No. 23 of 2002 and amended by Law No. 35 of 2014 and other technical implementing regulations indicates how the government has great and serious effort to safeguard and protect children and materialize the achievement of the welfare of Indonesian children. In Law No. 35 of 2014, the rights of children are increasingly expanded by adding the right of children for protection in the education unit from sexual crimes and

violence committed by educators, education personnel, fellow students and/or other parties. Thus, there is an expectation to prevent and minimize the occurrence of cases of child sexual abuse and other cases of child violence, such as the recent rising cases and highly seized the attention of the government, society and parents as well as observers of children as child cases requires serious actions to be addressed immediately for the survival of a nation.

III. CONCLUSION

Based on the description in the discussion section above, it can be concluded that the legal protection of children by the state/government, including children as victims of sexual abuse by issuing instruments of legislation as well as the establishment of supporting institutions and other infrastructure facilities on child protection has provided expectation for the crystallization of child welfare, even though it has not been fulfilled optimally and satisfactorily, let alone the challenges the future are even more severe due to the emergence of many trigger factors related to the problem of sexual violence against children.

IV. REFERENCE

- [1] Ferry, Yohannes .1997. *Kekerasan Seksual Pada Anak Dan Remaja*. Jakarta.Rajawali.
- [2] Noviana,Ivo. 2015.*Kekerasan Seksual Terhadap Anak: Dampak Dan Penanganannya*. Jurnal Sosio Informa .Vol. 01, No. 1, Januari - April, Pusat Penelitian dan Pengembangan Kesejahteraan Sosial, Kementerian Sosial RI.
- [3] Waluyo,Bambang.2018.*Victimologi (Perlindungan Korban dan Saksi)*. Jakarta. PT Sinar Grafika.
- [4] Saraswati,Riska. 2015.*Hukum Perlindungan Anak Di Indonesia*. Semarang.PT Citra Aditya Bakti.
- [5] Suleman,Munandar Dkk. 2019.*Kekerasan terhadap Perempuan : Tinjauan Dalam Berbagai Disiplin Ilmu & Kasus Kekerasan*. Bandung.PT Refiak Aditama.
- [6] Yulia ,Rena. 2010. *Victimologi (Perlindungan Hukum Terhadap Korban)*.Yogyakarta. Graha Ilmu.
- [7] Undang-undang Nomor 23 tahun 2002 tentang Perlindungan Anak
- [8] Undang-undang Nomor 23 tahun 2004 tentang Kekerasan Dalam Rumah Tangga
- [9] Undang-undang Nomor 13 tahun 2006 tentang Perlindungan Saksi dan Korban
- [10] Undang-undang Nomor 35 tahun 2014 tentang Perlindungan Anak
- [11] <https://www.liputan6.com>. liputan6, 26 Juli 2019, pukul 13.00, Diakses tgl 25 Agustus 2019 pukul 06.00.Kejati: *terpidana hukuman kebiri kimia divonis 8 tahun dalam Perkara lain*.
- [12] <https://www.liputan6.com>. liputan6, 26 Juli 2019,pukul 13.00, DP3AK Jatim.*Kekerasan Anak*. Diakses tgl 25 Agustus 2019 pukul 06.00.
- [13] <https://www.liputan6.com>/Nefri Inge,18 juli 2019 pukul 05.00).
- [14] <https://www.republika.co.id>, 29 Agustus 2019.