

Legal Formulation to Protect the Victims of Criminal Sexual Violence in the Household

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ABSTRACT

Children who are the victims of sexual violence in the household should have legal protection because one of the objectives of the establishment of the Republic of Indonesia is to protect its citizens (child victims of criminal acts). However, they often fail to obtain legal protection. This study discussed the legal formulation to protect the child victims of sexual violence crimes in the household. The research used normative legal research to analyze legal formulations to protect child victims of criminal sexual violence in the family. In conclusion, a legal rule is needed that can directly protect the children victims of sexual violence.

Keywords: *children, sexuality, domestic violence*

1. INTRODUCTION

One manifestation of the republic of Indonesia unity is to protect the whole of Indonesia. The objectives listed in the preface of the 1945 Constitution of the Republic of Indonesia are further described in the chapters in the body of the 1945 Constitution of the Republic of Indonesia, known as constitutional rights, including: the right to justice, the right to protection and the free rights of threats, discrimination, and violence.

In achieving these objectives, the country is obliged to protect all Indonesian citizens, especially children and vulnerable groups or victims of a criminal offense. The review of the protection for the victims of a criminal offense shows that it is only provided with abstract protection formulated into a formulative policy [1]. Victims who are affected by a criminal act are often neglected. Moreover, with the increasing attention to the development of the prisoners who are unrelated to the fulfillment of victims' interests, it is not surprising if the attention to the victim is far from protection.

Protection against victims of a criminal offense is crucial to note and prioritize because the suffering of victims does not end when the penalty or punishment induced to perpetrators or when the perpetrators undergo the punishment for his deeds. Hence, the criminal law should adjust the quality and quantity of the suffering and loss suffered by victims of a criminal act [2].

Although the 1945 Constitution of the Republic of Indonesia has emphasized the right to protection and the right to be free from

violence, as a constitutional right for all Indonesian citizens, the number of children who are victims of sexual violence is still very high. Note concerning violence against Women in 2017 was compiled by the National Commission on Violence Against Women, the number of sexual violence in the private domain ranks second highest, below the physical violence. The percentage was quite large, 31 percent of all incoming reports, or as many as 2,979 cases. The concern is that most forms of sexual violence (1,210 reports) in the private domain are carried out by those closest to them, who still have blood relations (incest). Perpetrators of sexual violence in the personal domain also varied, including: boyfriend (1,528 cases), biological father (425), uncle (322), stepfather (205), husband (192), and other perpetrators who have family relations. It is undeniable that Indonesian national law regulates the protection of victims of criminal acts. However, the laws governing the legal protection of criminal acts victims are scattered in various laws and regulations. Thus, they only apply to certain criminal acts.

Based on the above description, the position of the victims in a crime can be said not easily solved by law. Especially if we examine the law further on the elimination of violence in household. If the offender (parent) is proven to have committed a crime of sexual violence against a child, the offender is sentenced to prison for his actions. In this case, who will provide for the victims (children)? If the perpetrator is imposed a financial penalty,

the country will take payment of the penalty. In this case, the victim may experience violence again, namely the physically and materially due to the criminal justice process. While the purpose of punishment must benefits many people, not only to certain people (perpetrators) [3], but also to guarantee the true happiness of society. According to Article 27 paragraph 1 of the 1945 Constitution of the Republic of Indonesia, all citizens are equal in the law. It is in line with the principle of equality before the law, which is an important principle in the rule of law towards the appreciation and basic commitment of the equality principle of all citizens the state, either an offender or a victim of a criminal offense [4]. Humanity and justice, as the joint values of the state philosophy (Pancasila) animates the entire existence of law in Indonesia, starting from the 1945 Constitution of the Republic of Indonesia to the laws and regulations below. The criminal justice system through the product of laws and regulations in Indonesia, has not included a protection for victims, specifically for victims of criminal acts.

The above description shows that the criminal law should be reviewed. It must be viewed from broader interests, not only focused on the retaliation for the perpetrators of the crime, but also consider the interests of the victims.

2. Problem

Based on this background and rationale, the research problem of this study was as “what is the formulation of legal protection for child victims of sexual violence in the household??

3. RESEARCH METHODS

This research used normative legal research. Normative legal research is research conducted by examining library data using secondary data sources, in the form of primary, secondary, and tertiary legal materials [5]. This research was a prescriptive analysis [6], which means that this research not only illustrated by analyzing a situation or symptom, both on a positive and empirical legal view, but also provided a proper arrangement (*das sollen*) and solved legal problems related to protection of children victims of sexual violence criminal acts in the criminal law in Indonesia.

To provide an assessment of this research, the data was analyzed using

qualitative methods [7]. The data analyzed qualitatively will be presented in the form of a systematic description, by explaining the relationship between the various types of data so that all data were selected and then analyzed descriptively drawing the conclusions in this study [8].

4. Discussion

Legal protection for children can be interpreted as efforts to protect the law against various freedoms and human rights as well as various interests related to the welfare of children [9]. Based on the above limitations, the scope of legal protection for children includes: protection of children's freedom, and protection of children's human rights, and legal protection of all children's interests related to welfare [10]. In a state view, the seriousness of the state to protect each of its citizens, including children, can be found in the preamble to the 1945 Constitution, as set forth in paragraph IV, which is further elaborated in Chapter XA of the 1945 Constitution of the Republic of Indonesia concerning human rights. The consequence of the scope of legal protection for children as mentioned above is that all legal policies (laws and regulations) related to children must lead to children's freedom and children's rights, so that the children's welfare is achieved. Some laws and regulations addressed to support the implementation of legal protection for children victims of domestic crime are presented as follows.

4.1. Law Number 23 of 2004 concerning the Elimination of Domestic Violence

The protection in this law to children victims of sexual violence criminal acts in the family has no explicit regulation because this law regulates the legal protection of the victims of general criminal acts. So that, in the provisions of this law, legal protection is not distinguished between a child and an adult. Thus, both children and adults, who are victims of criminal acts of sexual violence in the household, are entitled to the legal protection specified in this Law. The provisions contained in this law have mandated that victims are entitled to protection, that is temporary or based on the decision of the court. The protection includes health care, being hidden, assistance and spiritual guidance [11]. Reviewing the provisions contained in this law, it the

regulation and form of protection for victims of sexual violence remains unclear. Hence, in its application, it is expected that law enforcement officials can free themselves from the shadow of legal texts to think and act objectively oriented towards restorative justice to provide the happiness for victims of sexual violence in the household.

4.2. Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection

Efforts to protect children need to be continuously pursued to maintain the welfare of children, considering that children are one of the valuable assets for the nation development in the future. Therefore, the state, along with the whole community, work together in providing adequate protection to children against various forms of violence and manipulation committed by irresponsible people. Protection of children aims to ensure the fulfillment of children's rights so that children can live, grow, develop, and participate optimally for the realization of quality, noble, and prosperous Indonesian children. A child has the right to obtain legal protection from targets of torture and violence. The government is obliged and responsible to provide special protection for child victims of criminal acts, including criminal acts of sexual violence [12]. Special protection for children is carried out with rapid treatment in the form of treatment, rehabilitation and prevention of diseases and other health problems. Besides, it also accompanies psychosocial care from the time of treatment to recovery, and the provision of social assistance, as well as providing protection and assistance in each judicial process [13].

4.3. Law Number 31 Of 2014 Concerning Amendments To Law Number 13 Of 2006 Concerning Protection Of Witnesses And Victims

When referring to the provisions in the articles of this law, there is an act that explicitly addresses the protection of children victims of criminal acts of domestic violence. As stated in the provisions of the law, the protection of witnesses and victims cover the protection all victims of a crime, both a child and an adult. It also protect the victim of a crime in all environments, including family, school, work environment etc. Hence, legal

protection is given to anyone who becomes a victim of a crime. Victims of sexual violence have the rights as regulated in this law, that are security and freedom from threats. In this case, a victim can choose and determine the protection needed, such as a change of identity (if the victim wants it), and a new residence, and reimbursement of transportation costs as needed. The victim is entitled to receive temporary living assistance until the deadline protection ends [14]. Thus, when we refer to the protection regulated in this law, it only provides temporary protection. Moreover, the protection provided is only during the investigation and treatment process. The protection should be provided to children even after treatment, including guiding the children in achieving their dream so that the goal of a prosperous Indonesian society will be realized.

5. CONCLUSIONS

Legal protection efforts provided to children victims of sexual violence criminal acts in the household as regulated in the formulation of the law, namely the law on the Elimination of Domestic Violence, child protection laws, and laws the witness and victim protection legislation are health services, identity withheld, assistance and spiritual guidance. The protection may be in the form of treatment, rehabilitation and prevention of diseases and other health problems, as well as protection of security and freedom from threats. The protection provided remains abstract and are scattered in various laws and regulations. Thus, it only applies to certain criminal acts. Therefore, a legal formulation is necessary to provide direct protection against child victims of sexual violence in the household.

REFERENCES

- [1] Barda Nawawi Arief, 2002, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung, Citra Aditya Bakti, hal. 223.
- [2] Lilik Mulyadi, 2007, *Kapita Selekta Hukum Pidana, Kriminologi dan Victimologi*, Jakarta, PT Djambatan, hal. 122.
- [3] Chairul Huda, 2008, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Jakarta, Kencana Prenada Media Group, hal. 133.

- [4] Bambang Waluyo, 2014, *Viktimologi Perlindungan Korban & Saksi*, Jakarta, Sinar Grafika, hal. 1.
- [5] Ediwarman, 2015, *Monograf Metodologi Penelitian Hukum Panduan Penelitian Skripsi, Tesis dan Disertasi*, Medan, Sofmedia, hal. 25-27.
- [6] Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Jakarta Kencana, hal. 22.
- [7] Milles dan Hubberman, 1992, *Analisis data kualitatif buku tentang sumber data-data baru*, Jakarta, Universitas Indonesia press, hal. 15-20.
- [8] Tampil Anshari Siregar, 2005, *Metodologi Penelitian Hukum*, Medan, Pustaka Bangsa Press, hal. 103.
- [9] Barda Nawawi Arief, 1998, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung, Citra Aditya Bakti, hal 153.
- [10] Waluyadi, 2009, *Hukum Perlindungan Anak*, Bandung, CV. MandarMaju, hal. 1.
- [11] Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga Pasal 10.
- [12] Undang-Undang Nomor 35 tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak, Pasal 59.
- [13] *Ibid*, Pasal 59A.
- [14] Undang-Undang Nomor 31 tahun 2014 tentang Perubahan atas Undang-Undang Nomor 13 tahun 2006 tentang Perlindungan Saksi dan Korban Pasal 5.