

Legal Protection of Children's Rights That Have Sexual Harvest Reviewed from Victimology in Indonesia

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ABSTRACT--Under the law, "child sexual abuse" is a general term that describes criminal and civil acts in which adults engage in sexual activity with minors or exploitation of minors for the purpose of sexual satisfaction. The American Psychiatric Association states that "children cannot approve sexual activity with adults", and condemn such actions by adults: "An adult involved in sexual activity with a child is committing a criminal and immoral act that can never be considered normal or socially acceptable behavior. Child sexual abuse can result in short-term and long-term harm, including psychopathology later on. Its psychological, emotional, physical and social impacts include depression, posttraumatic stress disorder, anxiety, eating disorders, poor self-esteem, personal identity disorder and anxiety; common psychological disorders such as dogmatization, nerve pain, chronic pain, changes in sexual behavior, school / learning problems; and behavioral problems including drug abuse, self-harm, animal cruelty, adult crime and suicide. The specific character patterns of the symptoms have not been identified and there are several hypotheses in this causality association. The purpose of this study is to find out about the form of legal protection for the rights of children who experience sexual abuse in terms of victimology in Indonesia. The type of research used is normative legal research, where the approach is taken to look at the legal protection of the rights of children who experience neglect and sexual violence in terms of victimology in Indonesia. The type of research used is the type of descriptive research. The form of research is normative juridical. Child protection can also be interpreted as all efforts aimed at preventing, rehabilitating, and empowering children who experience (child abused), exploitation and neglect, so as to ensure the survival and growth of children in a natural, physical, mental, and social. Actions that can be done to protect the rights of children who are victims of sexual harassment include providing assistance to children who are victims of sexual violence and participating in monitoring the implementation of child cases at each level of the justice system and providing legal assistance, advocating child abuse. sexually to influence legal processes and policies, take precautions through socialization to the general public and provide assistance in solving the problems of children who have been victims of sexual harassment, and build cooperation with competent relevant parties to solve the problem of children who are victims of sexual violence.

Keywords: harassment, sexual, acts, law, victim

I. INTRODUCTION

Throughout 2013 and continued in 2014, more and more cases of sexual abuse occurred to children. Even many parties outside the country, attracted attention due to cases of sexual harassment [1] that occurred in an international standard school (JIS).

In 2015 in April there were child abandonment cases committed by their own biological parents. Then in June there were child neglect cases carried out by his adoptive mother, which later caused the child to die and was sexually abused by the suspect of the murderer.

Sometimes these criminals are not foreigners to those children, they should even be people who must protect and educate the children themselves. There were the perpetrators of their own fathers, grandfathers, uncles, brothers, teachers in schools and even those who were the teachers of the Koran for the children.

For victims there are already teenagers, children and even those who are still toddlers, who are also victims of sexual abuse committed by their closest people.

Sexual abuse of children is a form of child abuse committed by older adults or teenagers using children for sexual stimulation.[2] Forms of child sexual abuse include asking or pressing a child to engage in sexual activity (regardless of the results), giving indecent exposure to genitals for children, displaying pornography for children, having sexual relations with children, physical contact with the child's genitals (except in certain non-sexual contexts such as medical examinations), seeing a child's genitals without physical contact (except in a non-sexual context such as a medical examination), or using a child to produce child pornography. [3]

The effects of child sexual abuse include depression, post-traumatic stress disorder, anxiety, tendency to become further victims in adulthood, and physical injury to children among other problems. Sexual abuse by family members is a form of incest, and can result in more serious effects and long-term psychological trauma, especially in the case of incest.

Most perpetrators of sexual abuse are people known to their victims; around 30% are families of the child, most often are brothers, fathers, uncles, or cousins; around 60% are other acquaintances such as 'friends' from family, caregivers, or neighbours, foreigners are about 10% offenders in cases of child sexual abuse. Most child sexual abuse is carried out by men; studies show that women commit 14% to 40% of reported violations of boys and 6% of reported violations against women. Most offenders who sexually abuse pre-puberty children are paedophilia, although some perpetrators do not meet the clinical diagnosis standards for paedophilia.

Under the law, "child sexual abuse" is a general term that describes criminal and civil acts in which adults engage in sexual activity with minors or exploitation of minors for

the purpose of sexual satisfaction. The American Psychiatric Association states that "children cannot approve sexual activity with adults", and condemn such actions by adults: "An adult involved in sexual activity with a child is committing a criminal and immoral act that can never be considered normal or socially acceptable behaviour.

Child sexual abuse can result in short-term and long-term harm, including psychopathology later on. Its psychological, emotional, physical and social impacts include depression, posttraumatic stress disorder, anxiety, eating disorders, poor self-esteem, personal identity disorder and anxiety; common psychological disorders such as dogmatization, nerve pain, chronic pain, changes in sexual behaviour, school / learning problems; and behavioural problems including drug abuse, self-harm, animal cruelty, adult crime and suicide. The specific character patterns of the symptoms have not been identified and there are several hypotheses in this causality association.

Long-term negative effects on the development of victims who experience repeated treatment in adulthood are also related to child sexual abuse. The study revealed that there was a cause and effect relationship of childhood sexual abuse with cases of adult psychopathology, including suicide, anti-social behaviour. Studies have established a causal relationship between childhood sexual abuse and certain areas of adult psychopathology, including suicidal tendencies, anti-social behaviour, post-traumatic psychiatric disorders, anxiety, and alcoholism. Adults who have a history of sexual abuse in childhood, generally become customers of emergency services and medical services than those who do not have a dark history of the past. A study comparing women who experienced childhood sexual abuse than those who did not, resulted in the fact that they needed higher health care costs than those who did not.

Children who are sexually abused suffer from psychological symptoms greater than other normal children; a study has found these symptoms are 51 to 79% in children who experience sexual abuse. The risk of danger will be greater if the perpetrator is a family or close relative, also if the abuse reaches sexual intercourse or coercion, or if it involves physical violence. The level of danger is also influenced by various factors such as the entry of the genitals, the number and duration of harassment, and the use of violence and adverse effects will have little effect on children who experience sexual abuse but have a supportive or accompanying family environment after abuse.

Violence against children, including sexual harassment, especially chronic abuse from an early age has been found to be associated with the development of dissociate symptoms that include amnesia for memories of violence. The level of dissociation has been found to be associated with extraordinary reports of sexual and physical abuse. When severe sexual abuse (penetration, multiple offenders, lasting more than one year) has occurred, dissociate symptoms are even more prominent.

Child sexual abuse independently predicts the number of symptoms for PTSD that display people, after controlling for variables that might interfere, according to Widom, "sexual harassment, perhaps more than other forms of childhood trauma, causes dissociate problems. These PTSD findings only represent some of the features of long-term psychiatric sequelae associated with early childhood victims such as antisocial personality disorder, alcohol abuse, and other forms of psychopathology. [4]

" Children can develop symptoms of posttraumatic stress disorder due to child sexual abuse, even without actual or threatening injury or using violence.

II. RESEARCH METHODOLOGY

The paper was based upon a normative legal research. The secondary data collected consist of both primary and secondary legal materials related to international norms, and the analysis used a statutory approach by examining international legal instruments concerning refugee protection, including the principle of non-refoulement, state sovereignty, and human rights. The research findings will be aimed to clarify the principle of non-refoulement based on the factual context.

III. RESEARCH PURPOSES

Based on the description above, the main problem that will be formulated in this study is how the legal protection of the rights of children experiencing sexual abuse is reviewed from victimology in Indonesia.

IV. LITERATURE REVIEW

A. Definition of Child Protection

Child protection is any effort made to create conditions so that every child can carry out their rights and obligations for the development and growth of the child naturally, physically, mentally and socially. Child protection is the realization of justice in a society, thus child protection is endeavoured in various fields of state life and society.

Child protection activities have legal consequences, both in relation to written law and unwritten law. The law is a guarantee for the certainty of child protection. As Arif Gosita points out, "legal certainty needs to be endeavoured for the continuity of child protection activities and preventing fraud that brings undesirable negative consequences in the implementation of child protection." [11]

Child protection can be divided into 2 (two) parts, namely:

- 1) Juridical child protection, which includes: protection in the field of public law and in the field of civil law.
- 2) Non-juridical child protection, including: protection in the social, health, education fields. [12]

Article 1 point 2 of Act Number 35 of 2014 stipulates that child protection is all activities to guarantee and protect children and their rights in order to live, grow, develop, and participate, optimally in accordance with human dignity and dignity, and get protection from violence and discrimination.

Child protection can also be interpreted as all efforts aimed at preventing, rehabilitating, and empowering children who experience (child abused), exploitation and neglect, so as to ensure the survival and growth of children in a natural, physical, mental, and social.[13] Arif Gosita believes that child protection is an effort to protect children from exercising their rights and obligations.

Child protection basics are: [14]

Philosophical Basis; Pancasila basic activities in various fields of family life, community, state and nation, as well as a philosophical basis for the implementation of child protection;

Ethical Basis; the implementation of child protection must be in accordance with the relevant professional ethics, to prevent deviant behaviour in the exercise of authority, power and strength in the implementation of child protection;

Juridical basis; the implementation of child protection must be based on the 1945 Constitution and various other applicable laws and regulations. This juridical application must be integrative, namely the integrated application of laws and regulations from various related legal fields.

B. Child Protection Law

In society, everyone has their own interests which are not only the same but also sometimes contradictory, for this reason it is necessary to have legal rules in managing those interests, which are related to the interests of children regulated by legal provisions relating to child protection, which is called the Law of Protection Child.

Arif Gosita, stated that the law on child protection is a law (written or unwritten) that guarantees the child can truly exercise his rights and obligations.

Bismar Siregar is of the opinion that "The Aspect of Child Protection Law is more focused on the rights of children who are regulated by law and not obligations, given that legally (juridically) children have not been burdened with obligations." [15] H. de Bie formulated "Kinderrecht (Aspects of Child Law) as a whole legal provisions concerning the protection, guidance and justice of children and adolescents, as regulated in BW, Civil Procedure Law, Criminal Code, and Criminal Procedure Law and their implementing regulations."

Child Protection Law is a law that guarantees children's rights and obligations, Child Protection Law in the form of: Customary Law, Civil Law, Criminal Law, Civil Procedure Law, Criminal Procedure Law, and other regulations concerning children. Child protection involves various aspects of life and livelihood, so that children can truly grow and develop naturally in accordance with their human rights.

According to Bismar Siregar, "The issue of legal protection for children is one of the contents of the approach to protecting Indonesian children. The problem can not only be approached juridical, but it needs a broader approach, namely economic, social and cultural. " [16]

By paying attention to various international documents and meetings, it can be seen that the need for legal protection for children can cover various fields / aspects, including: [17]

Protection of human rights and freedoms; Child protection in the judicial process; Protection of children's welfare (in a family environment, education, and social environment); Child protection in matters of detention and seizure independence; Child protection from all forms of exploitation (slavery, child trafficking, prostitution, pornography, trade or drug abuse, manipulating children in doing crime and so on); Protection of street children; Child protection from the consequences of war / armed conflict; Child protection against acts of violence.

C. Children's Rights in the Trial Process

During the judicial process, the rights of the child must be protected such as the principle of presumption of innocence, the right to understand the indictment, the right to be silent, the right to present parents or guardians / foster parents, the right to face, and cross-examination of testimony against him and the right to appeal .

The rights of children as witnesses before the trial include:

- 1) The right to be considered is the report submitted by a responsive / sensitive follow-up, without complicating the reporters;
- 2) The right to get protection against actions that harm the mental, physical, and social suffering of anyone because of their testimony;
- 3) The right to get facilities to participate and facilitate examination as a witness.
- 4) The rights of children during the trial in their position as witnesses include, inter alia;
- 5) The right to get facilities to attend the hearing as a witness;
- 6) The right to get an explanation of the procedure for the trial;
- 7) The right to get permission from the school to be a witness. While the right of the child after the trial is in his position as a witness, physically, socially from anyone.

The development of children's rights in the criminal justice process is a result of the interaction of children with families, communities, law enforcers that influence each other. Family, community, and law enforcement need to increase awareness of protection and pay attention to children's rights for the welfare of children.

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V. ANALYSIS

Forms of Legal Protection Against the Rights of Children Experiencing Sexual Harassment from a Victimology Review in Indonesia

1. Limitation of Sexual Harassment

Sexual violence is an important issue in the entire map of violence against women because it is unique to women. As in the issue of disharmony the power relations referred to between men and women. The disharmony is getting worse by being influenced by economic factors, community acceptance, resources including knowledge of victims.

Komnas Perempuan found data about 12 years (2001-2012), there were at least 35 women who were victims of sexual violence every day.[6] In 2012, at least 4,336 cases of sexual violence were recorded, of which 2,920 cases occurred in the public / community domain, with the majority of the forms being rape and sexual abuse (1620). The age of the victim was found to be increasingly young, between the ages of 13-18 years.

The 15 types of sexual violence found by the National Commission on Violence against Women (Komnas Perempuan) from the results of their monitoring for 15 years (1998– 2013), among others: [6]

Rape Sexual

2. Intimidation includes threats or attempted rape
 - a) Sexual harassment
 - b) Sexual Exploitation
 - c) Trafficking of Women for Sexual Purposes
 - d) Forced Prostitution
 - e) Sexual Slavery
 - f) Forced marriage, including hanging divorce
 - g) Forced Pregnancy
 - h) Forcing Abortion
 - i) Forcing contraception and sterilization
 - j) Sexual Torture
 - k) Inhuman and sexual nuances

Practices of sexual nuances that endanger or discriminate against women Sexual control, including through discriminatory rules based on morality and religion.

Limitation of criminal responsibility according to positive law In criminal law there are three important things, namely: concerning criminal acts, criminal liability and punishment. The criminal act is related to the subject or perpetrator of the offense, criminal liability is related to the basis for imposing a criminal offense, while the criminal act is a sanction imposed on the person who commits a criminal act provided that the person can account for it.[7]

According to Herbert L. Packer, criminal law is based on three concepts namely violation, error and punishment. The criminal law substance according to him is:[8]

- 1) What conduct should be designated as criminal (what actions can be determined as a criminal act)
- 2) What determinations must be made before a person can be found to have committed a criminal offense (what conditions can determine that someone is considered to have committed a crime)
- 3) What should be done with persons who are found to have committed criminal offenses (what can be done to the offender).

Inside the Criminal Code or Westbrook van Strafrecht is known as the strafbaarfeit. While the literature on criminal law often uses the term offense, while the legislator in formulating the law uses the term criminal event or criminal act or criminal act.

Regarding the definition of offense (strafbaarfeit), according to VOS, the offense is feet which is declared legally valid by law. According to Van Hamel, the offense is an attack or a threat to the rights of others. Meanwhile, according to Simons, the offense is an unlawful act that has been done intentionally or unintentionally by someone who can be held responsible for his actions and by law has been declared an act or action that can be punished.[9]

In Indonesia the enactment of criminal law is regulated in the Criminal Code, Article 2 to 9 of the Criminal Code, Article 2 states, "Criminal provisions in the laws of the Republic of Indonesia apply to every person in the Republic of Indonesia to commit a criminal act." in the 2004 Criminal Code Bill, the scope of the enactment of criminal legislation is regulated in Articles 1 to 10.

Article 3 of the Draft Penal Code states that criminal provisions in Indonesian law apply to everyone who carries out:

- 1) Criminal act in the territory of the Republic of Indonesia
- 2) Criminal offences in Indonesian ships or aircraft; or
- 3) Criminal acts in the field of information technology whose consequences are felt or occur in the territory of Indonesia and in Indonesian ships or aircraft

The criminal provisions stipulated in Chapter XIV concerning these crimes against morality are intentionally formed by lawmakers with a view to protecting people from immoral acts and behaviours both by speech and by deeds of immorality because contrary to people's views on propriety in the sexual field, both in terms of the views of

the local community and in terms of people's habits in carrying out their sexual lives.

As stated by Wiryo Prodjodikoro, morality is also about good customs, but specifically about the sex (sex) of a human being. Thus, the crime regarding moral offences should only be acts that violate the norms of sexual decency which are classified as crimes against morality.

However, according to Roeslan Saleh, the nation of decency should not be limited to the understanding of decency in the sexual field, but also includes other matters included in the mastery of norms of behaviour in the community. Along with the progress experienced by society in various fields, there are also legal regulations. The addition of these legal regulations cannot be prevented because the community hopes that with the increase in regulations, life and security will improve even though the number of violations of these regulations may increase.[10]

VI. CONCLUSION

From the above, what must be done to protect the rights of children who are victims of sexual harassment is by providing assistance to children who are victims of sexual violence and by monitoring the implementation of child cases at each level of the justice system and providing legal assistance, advocating for become victims of sexual harassment to influence legal processes and policies, take precautions through socialization to the general public and provide assistance in solving problems of children who have been victims of sexual harassment, and build cooperation with competent relevant parties to solve the problem of children who are victims of sexual violence.

VII. RECOMMENDATION

The institutions involved in law enforcement, especially those relating to sexual abuse of children, will further improve their performance so that children who are victims of sexual harassment receive effective protection and can increase socialization to the community and law enforce.

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