

Legal Protection for Children in Efforts to Prevent Crimes of Sexual Violence against Children

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Abstract

Children often become victims of criminal acts of sexual violence. The number of children who are victims of these criminal acts continues to increase, as if the perpetrators never feel worried that the law will result in heavy sanctions. In providing protection for children victims of sexual violence and providing legal assistance for children victims of sexual violence, many obstacles are still encountered. These constraints are both constraints from internal factors and also constraints from external factors. In reality, the implementation of legal protection for child victims of sexual violence cannot be implemented optimally in accordance with existing legal and regulatory policies in Indonesia. Enforcing the law in criminal acts of sexual violence against children can fulfill a sense of justice for the victim, the victim's family and the community. In an effort to impose maximum sentences and provide strict sanctions for perpetrators of criminal acts of sexual violence against children. based on Law Number 35 of 2014 concerning the legal protection of children in article 64 (special protection for children in conflict with the law as intended in article 59 paragraph (2) letter b) is carried out through: humane treatment by taking into account the general needs, separation from adults, effective provision of legal aid and other assistance, implementation of recreational activities, freedom from torture, punishment or other cruel, inhumane and degrading treatment, avoidance of the death penalty and/or life imprisonment, avoidance of arrest, detention or imprisonment, except as a last resort and within the shortest time, provision of justice before an objective, impartial juvenile court and in a trial closed to the public, avoidance of publication of their identity, provision of parental/guardian assistance and people trusted by children, providing social advocacy, providing personal life, providing accessibility, especially for children with disabilities, providing education, providing health services, providing other rights in accordance with statutory provisions.

Keywords :Legal Protection, Prevention, sexual

INTRODUCTION

Based on Article in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, what is meant by child is a person who is not yet 18 (eighteen) years of age, including children in the womb. Child protection is everything activities to guarantee and protect children and their rights so that they live, grow, develop and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination. Violence itself is basically all forms of behavior, both verbal and non-verbal, carried out by a person or group of people against another person or group of people, thereby causing negative physical, emotional and psychological effects on the person who is the target." (Suzanalisa, 2017)

This phenomenon creates quite a large number of child victims and results in children experiencing developmental disorders, both physically and psychologically. Children who are victims of sexual violence or those from their families, often do not know what to do or are reluctant to try to resolve the problem, because they lack/don't have the knowledge, funds, courage and hope or perhaps also because of the belief that sexual violence has happened to them. Children are a disgrace that must be covered. Not infrequently, parents of children who are victims of sexual violence often feel embarrassed to reveal/report the incidents that happened to the child, so they do not report it and are reluctant to deal with the problem completely, through existing legal mechanisms.

The rise in cases of violence against children every day is a special concern for all parties, especially the government. In response to this, the government issued Law of the Republic of Indonesia Number 17 of 2016

concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to become Law of the Republic of Indonesia Number 35 of 2014.

Sexual crimes against children are still a serious problem and this is a social disaster that is disturbing society. The rate of sexual violence against children increases every year. This condition requires protection for children. One of the main causes of the emergence of sexual crimes against children in Indonesia is the lack of education, teaching, understanding and instilling religious values in society and the ease of accessing pornographic content.

Sexual violence at this time according to Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law number 23 of 2002 concerning Child Protection is stated with the term sexual crime, which is based on the need for increased commitment from the government, regional government and the community as well as all stakeholders related to the implementation of child protection. In fact, in Indonesia cases of sexual violence increase every year, the victims are not only adults, now they have spread to teenagers, children and even toddlers. Cases of sexual violence against children continue to increase from time to time. This increase is not only in terms of quantity or number of cases that occur, but also in terms of quality. What is even more tragic is that most of the perpetrators are from the family or environment around the child, including in their own home, school, educational institutions and the child's social environment.

Referring to the UN Convention on the Rights of the Child, the definition of a child: "A child means every human being under the age of 18 years, unless according to the law that applies to children, maturity is reached earlier." Law Number 35 of 2014 concerning Child Protection defines a child as someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Hadi Supeno stated that after the birth of the Child Protection Law, which in the legal strata is categorized as *lex specialist*, all other provisions regarding the definition of a child must be adjusted, including policies that are issued and related to the fulfillment of children's rights. (Beni Ahmad, 2007)

Children are the living we send to a time we will not see (children are the life messages we send for a time we don't see), that's how John W Whitehead in Lenny N. Rosalin describes the importance of children as the next generation as well as the greatest asset for the future. front. In a visionary view, children are a form of investment that is an indicator of a nation's success in implementing development.

The success of children's development will determine the quality of human resources in the future, as well as the generation that will become the nation's successor, so they must be prepared and directed from an early age so that they can grow and develop into children who are physically and spiritually healthy, advanced, independent and prosperous. quality power and can face future challenges. Therefore, efforts to develop children must start as early as possible, starting from the womb to the next stages of growth and development. The importance of the position of children for this nation means that we must be responsive and professional in arranging applicable laws and regulations. (Maulana Hasan Wadang, 2000)

The State and Government of the Republic of Indonesia have the obligation and responsibility to respect and guarantee the human rights of every child without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of the child, birth order of the child, and physical condition and/or or mental. The state and government are also obliged and responsible to provide support for facilities and infrastructure in implementing child protection. Regulations regarding the obligations and responsibilities of the state and government are contained in the provisions of Article 21 and Article 22 of the Law on Child Protection. Article 23 and Article 24 of the Law on Child Protection regulate state and government guarantees for the implementation of child protection.

METHOD

This research is a type of library research, namely research that uses literature that is appropriate to the problem being studied as a data source. So that in collecting the required data using library sources that are related to the main research problem formulated, both primary sources and secondary sources. According to Mahmud in his book *Educational Research Methods*, he explains that library research is a type of research carried out by reading books or magazines and other data sources to collect data from various literature, both libraries and other places.² From the explanation above it can be understood that library research is not only the activity of reading and recording the data that has been collected. But more than that, researchers must be able to process the data that has been collected through the stages of library research.

RESULTS AND DISCUSSION

1. Crime Prevention Efforts in Crimes of Sexual Violence Against Children

Criminal Law Instruments Concerning Criminal Acts of Sexual Violence Acts of sexual violence are acts that are very detrimental and seriously violate human rights, and are one of the many crimes against a person's self-esteem and are a form of discrimination that must be eliminated so that they do not occur easily. It has also been explained very clearly in Law no. 12 of 2022. In relation to Article 1(1) of Law Number 12 of 2022 (TPKS Law), criminal acts of sexual violence are acts that fall into the category of sexual violence. It is regulated by law and not regulated by this law.

Previously, the term sexual violence in the academic text of the TPKS Law included three types of sexual violence that could be found in standards in applicable laws and regulations. This separate mention of sexual intentions is according to the explanation from (Wieringa et al., 2019). However, existing regulations based on these three forms of sexual violence are still very limited when compared to using news on types of sexual violence that have been identified.

According to data from the National Commission on Violence Against Women's report, there are still approximately fifteen types of sexual violence (Komnas Perempuan, 2013). According to Komnas Perempuan, the list of sexual violations in the list is not completely accurate; there may be some sexual violations that have not been identified due to the impact of limited information (Komnas Perempuan, 2013). However, only one of the four main categories of sexual offenses mentioned above will be punished or criminalized under the TPKS.

Apart from that, there are still many things to pay attention to, there are nine other types of sexual crimes, including forced sterilization, forced marriage, sexual exploitation, sex and electronic sex crimes, and others. With the presence of the Sexual Violence Crime Law, it should be used as a basis for good and comprehensive regulations. The government needs to actually and seriously eradicate sexual violence because it is very concerned to see the many cases of sexual violence that occur.

Previous laws and regulations regarding criminal acts of sexual violence that already exist should be completed and should be more complex. Several regulations regarding sexual violence according to (Ilyasa, 2021) are discussed below: a. According to Moelyatno's translation of the Criminal Code, the Criminal Code (KUHP) normalizes sexual violence in the form of rape and immoral acts (fornication). In criminal law, both are crimes against good morals.

Another problem is that rape is seen as a crime against decency and contrary to society's moral norms. In fact, rape is a form of violence or crime against a person or against a person's physical integrity/sexuality. The reason why rape and fornication are classified as crimes against common sense, according to Lamintang, 2009, is that in the provisions of criminal acts that are deemed necessary to obtain protection for society from immoral or unlawful business methods and behavior are regulated in the Criminal Code Chapter 14 Article 2 and declared to be determined by the legislative body. In the form of words or actions that are contrary to lawfulness because they conflict with people's views about lawfulness in the field of sexual life, from the perspective of the society in which the words are said or the action is carried out, and their sexuality. People's habits of pursuing life (Lamintang, 2009).

Efforts to overcome criminal acts of violence against minors by formulating various laws aimed at eliminating discrimination against children, are realized by planning the formulation and ratification of laws that are closely related to their interests, therefore criminal policies against violence against children are wrong. one effort to implement this formulation. Criminal policy or crime prevention efforts are essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare. Therefore, it can be said that the ultimate goal or main objective of criminal policy is the protection of society to achieve prosperity. public.

Criminal policy is essentially an integral part of social policy, namely a rational effort to achieve social welfare. As an effort to overcome crime, criminal policy can manifest in various forms. First, namely repressive in nature which uses penal means, which is often referred to as the criminal justice system (criminal justice system. In this case it actually broadly includes the criminalization process. Second, namely in the form of prevention efforts without punishment (without using penal means), and third, is the utilization of efforts to form public opinion about crime and socialization of the law through mass media widely (Ni Putu Rai Yuliartini and Dewa Gede Sudika Mangku, 2021)

Linked to crime (violence) against children, criminal policy here can be intended as a rational effort to tackle violence against children. Thus, efforts to tackle violence against children are basically part of efforts to protect children in realizing child welfare.

2. Forms of Legal Protection for Child Victims of Sexual Exploitation in the Legal System in Indonesia

In Article 1 number 2 of Law Number 34 of 2014 concerning Child Protection, which states that "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with their dignity and human dignity, as well as receiving protection from violent discrimination." The definition of protection and the objectives of child protection are in line with the convention on children's rights and human rights protection contained in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). In Article 22 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is stated that: "Every child has the right to survival, growth and development and the right to protection from violence and discrimination."

In protecting children, there are several important aspects, namely:

- a. Guarantee and fulfillment of children's rights;
- b. Fulfillment of human dignity;
- c. Protection of children from violence and discrimination;
- d. The creation of children who are of good quality, have noble character and are prosperous.

Article 20 of the Child Protection Law states that the State, Government, Regional Government, Community, Family and Parents or Guardians are obliged and responsible for implementing child protection. To ensure the implementation of protection for children, the State, through the legislative body, makes legal regulations that contain protection for children, including in the case of children as victims of commercial sexual exploitation through social media. (Ika Agustini, Rofiqur Rachman, and Ruly Haryandra, 2021)

Article 5 of the child protection law states that children are victims or are given rights in the form of:

- a. Obtain protection for personal security, family and property, and be free from threats related to testimony that will be, is being, or has been given;
- b. Participate in the process of selecting and determining the form of protection and security support;
- c. provide information without pressure;
- d. obtain a translator;
- e. free from entangling questions;
- f. obtain information related to case developments;
- g. obtain information relating to court decisions;
- h. obtain information in cases where convicts are released;
- i. everything related to his identity is kept confidential;
- j. gaining a new identity;
- k. obtain a temporary residence;
- l. getting a new residence;
- m. obtain reimbursement for transportation costs according to needs;
- n. obtain legal advice;
- o. get temporary assistance with living costs until the protection period ends; and/or
- p. get assistance.

Article 90 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains that children as victims have the right to:

- a. medical rehabilitation efforts as well as social rehabilitation, both within the institution and also outside the institution;
- b. guarantees for safety, both physical, mental and social safety; And
- c. ease of obtaining information relating to case developments.

In addition to the legal regulations established to guarantee the protection of children, the government also established the Indonesian Child Protection Commission (KPAI) which has a large role in protecting children. The roles of KPAI include the following:

- a. Provide assistance in the implementation of children's rights;
- b. Monitoring the implementation of child protection;
- c. Conduct strategic studies of problems and policies relating to children;

Legal protection is considered important, because in the formation of a country laws will also be formed that regulate each of its citizens. Legal protection is a real picture of the operation of a legal function to realize legal objectives, namely justice, benefit and legal certainty. Everyone has the right to legal protection, including children. Legal protection of children in Indonesia means protecting the potential of human resources and developing Indonesian people as a whole towards a just and prosperous society, materially and spiritually based on Pancasila and the 1945 Indonesian Constitution. Child protection as stated in Article 3 of the Child Protection Law aims to guarantee the fulfillment of rights. children so that they can live, grow, develop and participate optimally in accordance with human dignity and dignity, as well as receive protection from violence and discrimination, in order to create Indonesian children who are of high quality, have noble character and prosperity.

In their efforts to provide protection to victims from criminal acts regarding sexual violence, the parties providing legal assistance themselves experienced various obstacles, namely difficulties in searching for evidence that it was true that a criminal act, namely sexual violence, had occurred. This can happen because of the lack of sources of information provided by the victim. Apart from that, the victim and the victim's family themselves actually have the opinion that an incident experienced by the victim himself is a disgrace which is thought to be able to harm the party's good name. his family will be contaminated because of this criminal act if the public finds out about it. (Mutiar Nastya Rizky and others, 2019)

Furthermore, children who are victims consider themselves to have no power, so they choose to be resigned, silent or afraid to tell the best about what they have experienced. So they will tend to withdraw themselves away from their social circle and they will think that they have committed a sin. Lastly, there is a threat given by the perpetrator, where this threat makes the victim not have the courage and fear to report the case of sexual violence they experienced.

Apart from that, another obstacle that is often felt and also encountered is regarding obstacles in the field of providing facilities related to legal aid. Where in several regions in Indonesia itself, efforts to provide facilities for protection and also carry out supervision for victims of criminal acts related to sexual violence, such as safe house facilities, are still lacking. This is due to the lack of budget for providing safe houses and also includes the operational costs of providing this assistance. (Nopiana Mozin and Maisara Sunge, 2021)

The unavailability of safe homes for children victims of sexual violence is an obstacle in providing supervision and counseling assistance to recover the psychological trauma of victims so that for the time being the participation of the victim's family is to accompany and be at the forefront of psychological recovery for children who are victims of sexual violence then the Department P2KBP3A also routinely provides assistance to victims so that the victim's psychological condition improves quickly so they can look forward to the future again. Obstacles that can arise in relation to providing protection in relation to enforcing the law in cases of criminal acts of sexual violence are that they can also originate from the victim. What this means is that the victim himself wishes not to be protected by law enforcers so that the victim's own rights cannot be exercised. (Syuha Maisytho Probilla, 2021)

For example, regarding personal safety for the victim to avoid the perpetrator if the perpetrator has not been caught, the victim has the right to be hidden in a safe house, but the victim is reluctant or even unwilling to be placed in the safe house that has been provided. This could happen due to a lack of trust in law enforcers themselves. Another obstacle that often arises is an obstacle that originates from law enforcement officials. This obstacle can be in the form of an investigator who often commits irregularities, which in this case are related to the interests of the rights of crime victims.

It cannot be ruled out that this deviation could also lead to consequences, namely bad mental health, which is demonstrated by individuals from the police as law enforcers themselves. because there are several victims of domestic violence who have to give a certain amount of money to get protection from the police and a large

number of children who are victims of rape who have to receive special treatment for protection. Differences in numbers often become an obstacle in all matters, including the implementation of victims' rights. As criminal acts increase, more crime victims appear, making it difficult for the police to handle them.

Legal Aid is assistance provided to legal aid recipients who face civil, criminal and state administration legal problems, both in handling litigation and non-litigation. Legal aid providers provide legal aid which includes exercising power of attorney, accompanying, representing, defending, and/or carrying out other legal actions for the legal interests of the legal aid recipient as part of the implementation of legal certainty guarantees. In carrying out legal aid, we often encounter various obstacles, especially the ineffective implementation of regulations which are often not carried out as they should be. The problem with providing legal aid is that there is no equitable legal aid.

CONCLUSION

Legal protection for children as victims of commercial sexual exploitation of children through social media in Indonesia is regulated in Law Number 34 of 2014 concerning Child Protection and contained in Law Number 13 of 2006 concerning Protection of Witnesses and Victims, which regulates the form of protection provided to children as victims of commercial sexual exploitation through social media, namely rehabilitation efforts, protection efforts from reporting on their identity through mass media and to avoid labeling, providing safety guarantees, receiving assistance or advocacy during the case process and afterwards, as well as providing accessibility to obtain information on case developments. In implementing this legal protection, the role of the wider community is also needed.

Based on the principles of legal protection regulated in international instruments and the Indonesian legal system, it can be concluded that the rights of child victims of sexual crimes must be protected and prioritized as an important matter. These principles guarantee that child victims of sexual crimes must be protected from discrimination and that the best interests of the child must be prioritized in all decisions relating to the rights and welfare of children. Children also have the right to participate in the decision-making process relating to themselves. These principles must be applied in practice, including in law enforcement and the delivery of health, education and social support services. However, more serious and integrated efforts are still needed to ensure appropriate and effective protection for child victims of sexual crimes.

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