

Legal Protection Against Victims Of The Crime Of Rapes Based On Justice Value

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Abstract

There are so many women who experience sexual violence, especially rape, women can't do much to avoid it and are forced to let it happen. The judicial process is often only oriented towards giving punishment but does not pay attention to how to restore the condition of the victim. The problem will be even more complicated, where most of our society views that issues related to decency are still very taboo to be discussed in public, especially the issue of the crime of rape. This study uses a normative juridical approach. The results of this study are 1) the factors have not been implemented because the law, law enforcement officers, the culture of the community and the factors of the facilities or facilities that cause the rights of rape victims which should be regulated and integrated for the right to restitution and or compensation, legal assistance, psychologists, psychiatrists, religious experts or other experts who are able to restore the victim's confidence. 2) Whereas the obstacle that arises comes from the victim, namely the victim herself who wants not to be protected by the Police, because the rape victim refuses to report it. 3) Protection of witnesses and victims according to Law no. 13 of 2006 concerning the protection of witnesses and victims is to provide a sense of security to witnesses and/or victims in providing information in every criminal justice process. Religious experts or other experts who are able to restore the victim's trust. 2) Whereas the obstacle that arises comes from the victim, namely the victim herself who wants not to be protected by the Police, because the rape victim refuses to report it. 3) Protection of witnesses and victims according to Law no. 13 of 2006 concerning the protection of witnesses and victims is to provide a sense of security to witnesses and/or victims in providing information in every criminal justice process. Religious experts or other experts who are able to restore the victim's trust. 2) Whereas the obstacle that arises comes from the victim, namely the victim herself who wants not to be protected by the Police, because the rape victim refuses to report it. 3) Protection of witnesses and victims according to Law no. 13 of 2006 concerning the protection of witnesses and victims is to provide a sense of security to witnesses and/or victims in providing information in every criminal justice process.

Keywords: criminal; rape; value of justice

1. Introduction

A person can do anything to fulfill his needs even if it violates the human rights and interests of others. These needs can be in the form of recognition, property, or sexuality, with the violation of a person's rights then a conflict begins, in fact both on social media and electronic media always talk about a conflict and even criminalism, so things like that are not something foreign.

Article 1 point 1 of Law no. 39 of 1999 provides an understanding of human rights (HAM) is a set of rights inherent in the nature and existence of humans as creatures of God Almighty and as a gift that must be respected, upheld and protected, by the state, law, government, and everyone. for the honor and protection of human

dignity.¹

Crimes of decency and sexual harassment have been troubling and worrying the community so that they cannot be viewed from a micro point of view only. If we want to know the root of the problem, we must dare to enter various "areas" of aspects of life that have an influence on human behavior, including crimes of decency and sexual harassment. Human behavior does not appear by itself but develops through a process, due to the influence of the natural, biological, sociological, political, economic or cultural environment.²

In everyday life, many women experience sexual violence, especially rape, women cannot do much to avoid it and are forced to let it happen.³ Although it is possible for the crime of rape to be committed against men, the percentage is still very small, maybe this is what causes women to become soft food targets for crime, this happens because women are considered weak creatures, especially seen from their physical strength, whereas in principle the position of women is recognized as equal to Men are included in obtaining decent employment opportunities or employment, as enforced in Article 27 paragraph (1) of the 1945 Constitution and women's participation in development in all fields is absolutely necessary, because it constitutes a large part of human resources available as the basic capital of development.⁴

In the Criminal Code, the crime of rape is regulated in articles 285-288 of the Criminal Code, the threat of punishment for the perpetrators of the crime of rape is quite high, although it does not affect the victim's condition if the state is only oriented to punish without providing legal protection for the victim. The trial process should aim not only at punishing, but improving conditions, maintaining and protecting and preventing repetition of actions through constructive judicial action.⁵

In fact, the judicial process is often only oriented towards punishing the perpetrators of criminal acts but does not pay attention to how to recover the condition of the victim, both physically and psychologically. The problem will be even more complicated if you look at it in terms of Indonesian culture, where most of our society views issues related to decency as still very taboo to be discussed in public, especially the issue of the crime of rape. Even though we strongly denounce these actions, such people will form the attitude of victims of rape crimes who are reluctant to report to the police, let alone to be submitted as victim witnesses in court.⁶ some even refuse to report because of threats from outsiders.

The reality is that there is a difference in position between the victim and the suspect, and/or the defendant, which is clearly stated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) and other related legislation. When examined, the Criminal Procedure Code regulates the rights of suspects and defendants more. For the rights of victims (victim) the regulation is not as strict and

¹Andika Wijaya, Wida Peaca Ananta, 2016, *Darurat Kejahatan Seksual*, Ctk. Pertama, Sinar Grafika, Jakarta, p. 59.

² Suparman Marzuki, Eko Prasetyo, Aroma Elmins Martha, 1995, *Pelecehan Seksual: Pergumulan Antara Tradisi Hukum Dan Kekuasaan*, Fakultas Hukum Universitas Islam Indonesia, p. 9.

³ Ibid, p. 34,

⁴Shanty Dellyana, 1988, *Perempuan Dan Anak Dimata Hukum*, Liberty Yogyakarta, p. 143.

⁵Ibid, p. 7.

⁶Suparman Marzuki, Eko Prasetyo, Aroma Elmins Martha, op.cit. , p. 64.

not as much as the rights of suspects and defendants. The possibility is that the victims of crimes/criminal acts have been represented by the state (investigators and public prosecutors). In addition, because the Criminal Procedure Code was originally created to protect suspects and defendants because at that time the suspect and/or defendant often received injustice, but the State forgot about the other party in a crime who also needed to be protected, namely the victim.

The low quality of child protection in Indonesia has drawn criticism from various elements of society. The question that is often asked is the extent to which the government has tried to provide (legal) protection to children, so that children can get guarantees for their survival and livelihood as part of human rights. In fact, based on the Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection,⁷ Those who are obliged and responsible for the implementation of child protection are the state, government, community, family, and parents. Child protection is an effort that supports the implementation of rights and obligations.⁸

The occurrence of a crime of rape, the victim cannot immediately take his rights, without going through a legal process. This is a consequence of the rule of law, the settlement of the rights of rape victims that result in pregnancy also goes through a legal process, because when the victim directly asks for or takes her rights from the suspect or defendant, it can be called extortion, revenge or as vigilante (eigen rechting). Often the police and public prosecutors carry out tasks that are supposed to help victims but in practice it is the victims who assist law enforcement institutions in carrying out their duties because the victim is positioned only as a witness to the victim which is one of the evidences that have been mentioned in the Criminal Code (Criminal Code). Criminal Code) do not feel that they represent the interests of the victim and act according to their wishes, The public prosecutor is more focused on demanding that the perpetrator be punished, but does not care about the rights of the victim so that the obligation to protect and the rights of the victim is ignored. In the event that a crime has occurred, has fallen on a ladder, the victim seems to have suffered repeated losses (Secondary Victim) that is committed by the perpetrator and also carried out by the state or law enforcement. Indonesia as a state of law (rechstaat) as stated in the state constitution Article 1 Paragraph (3) of the 1945 Constitution, this provides a strong legal basis for the application of clear legal rules in every element of people's lives. Especially problems related to children, as our thinking orientation is the one who commits a crime or against the law. but does not care about the rights of the victim so that the obligation to protect and the rights of the victim is neglected. In the event that a crime has occurred, has fallen on a ladder, the victim seems to have suffered repeated losses (Secondary Victim) that is committed by the perpetrator and also carried out by the state or law enforcement. Indonesia as a state of law (rechstaat) as stated in the state constitution Article 1 Paragraph (3) of the 1945

⁷ Dwiki Apriyansa, *Penegakan Hukum Terhadap Tindak Pidana Pemerkosaan Terhadap Anak Dibawah Umur dan Sanksi Yang Diterapkan*, Jurnal Panorama Hukum, Vol. 4 No. 2 Desember 2019 ISSN: 2527-6654, <https://ejournal.unikama.ac.id/index.php/jph/article/view/3967/2401>

⁸ Arya Witasari, "Implementasi Diversi Guna Mewujudkan Restorative Justice Dalam Sistem Peradilan Pidana Anak", *Jurnal Hukum Unisulla*, Vol. 35 (No. 2), 2009

Constitution, this provides a strong legal basis for the application of clear legal rules in every element of people's lives. Especially problems related to children, as our thinking orientation is the one who commits a crime or against the law. but does not care about the rights of the victim so that the obligation to protect and the rights of the victim is neglected. In the event that a crime has occurred, has fallen on a ladder, the victim seems to have suffered repeated losses (Secondary Victim) that is committed by the perpetrator and also carried out by the state or law enforcement. Indonesia as a state of law (rechstaat) as stated in the state constitution Article 1 Paragraph (3) of the 1945 Constitution, this provides a strong legal basis for the application of clear legal rules in every element of people's lives. Especially problems related to children, as our thinking orientation is the one who commits a crime or against the law. the victim seems to have suffered repeated losses (Secondary Victim) that is carried out by the perpetrator and also carried out by the state or law enforcement. Indonesia as a state of law (rechstaat) as stated in the state constitution Article 1 Paragraph (3) of the 1945 Constitution, this provides a strong legal basis for the application of clear legal rules in every element of people's lives. Especially problems related to children, as our thinking orientation is the one who commits a crime or against the law. the victim seems to have suffered repeated losses (Secondary Victim) which is carried out by the perpetrator and also carried out by the state or law enforcement. Indonesia as a state of law (rechstaat) as stated in the state constitution Article 1 Paragraph (3) of the 1945 Constitution, this provides a strong legal basis for the application of clear legal rules in every element of people's lives. Especially problems related to children, as our thinking orientation is the one who commits a crime or against the law.⁹

Based on the above background, the formulation of the problem in this research are: 1) How is the legal protection for victims of rape in positive criminal law is not currently based on the value of justice? 2) Are there any obstacles to the legal protection of victims of the crime of rape in the current positive criminal law? 3) How is the legal protection for the victims of the crime of rape based on the value of justice?

2. Research Methods

The approach method used in this study is a normative juridical approach. This research method is a legal research method of literature where the method or method used in legal research is carried out by examining existing library materials.¹⁰

3. Results And Discussion

3.1. Legal Protection Against Victims of the Crime of Rape in Positive Criminal Law Not yet Based on Justice Values

⁹ I Dewa Putu Gede Anom Danujaya, "Formulasi Model Sistem Pemidanaan Anak Di Indonesia", *Jurnal Daulat Hukum*, Volume 1, (No. 1), 2018

¹⁰ Soerjono Soekanto dan Sri Mamudji, 2009, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta, PT Raja Grafindo Persada, p. 13–14

The formulation of the rape article shows the standard of moral values used by society in treating women, especially wives. A wife in a sexual relationship does not have any rights over her husband.¹¹ In this regard, not only Article 285 of the Criminal Code needs to be replaced, but also the socio-cultural values and myths that imply the existence of male domination over women or others need to be replaced.

The element of intercourse is intended to enter the penis into the vagina (reproductive organs), it is required that sperm actually enter and release sperm. If, for example, there has been coercion with the entry of male genitalia, but the perpetrator (male) can hold it back so as not to release sperm, is this not rape? In fact, for the victim, the penetration is already painful and painful. Based on Article 285 of the Criminal Code, it does not include rape in the household or a husband raping his wife which is called marital rape. This provision does not prohibit the rape of the wife by her husband.

Legal protection for rape victims has not been regulated properly and fairly in criminal law as the value of justice contained in Pancasila and the 1945 Constitution. The implementation of the protection of the rights of rape victims as stipulated in criminal law has not all been implemented in Semarang. Factors that have not been implemented because of the law, law enforcement officers, community culture and factors of facilities or facilities. Based on this situation, the rights of rape victims that must be regulated and integrated into criminal policies through Indonesian criminal law are the right to receive restitution and or compensation, legal assistance, psychologists, psychiatrists, religious experts or other experts who are able to restore the victim's trust, restore the victim's good name. , the right to obtain appropriate information and services in following the development of the case,

The enactment of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims is expected to become the legal umbrella for the protection of witnesses and victims who have been felt to be under-protected in procedural law in Indonesia. The context of the presence of Law No. 13 of 2006 is within the framework to complete procedural institutions in the criminal justice process. Bearing in mind, in examining criminal cases to reveal the truth and provide justice, it is closely related to the strength of the evidence. In connection with the strength of the evidence in the examination of criminal cases, witnesses and victims have a very significant position in efforts to reveal the material truth. In that position, witnesses or victims attach potential threats.

In the general explanation of Law Number 13 of 2006 it is stated that KUHP Articles 50 to 68 only regulates the protection of suspects and defendants against possible violations of their rights. Therefore, based on the principle of equality before the law (equality before law) in the general explanation, witnesses and victims in the criminal justice process must be guaranteed legal protection. In Law Number 13 of 2006.¹²

The provision of assistance in Law Number 13 of 2006 is part of one form of protection that will be provided by LPSK. For this reason, by Law Number 13 of 2006

¹¹ Gosita Arif, 1985, *Victimisasi Kriminal Kekerasan*, Jakarta, Akademi Presindo, p. 19.

¹² Hamzah Andi, 1986. *Perlindungan Hak-hak Asasi Manusia dalam Kitab Undang-Undang Hukum Acara Pidana*, Bandung, Binacipta.

the concept of providing assistance is limited in such a way. For example in Article 6, what is meant by assistance only includes medical assistance and psychosocial rehabilitation assistance. The assistance is also only intended for victims of serious human rights violations. The two provisions for assistance, of course, have limited the general concept of providing assistance to victims, which is not discriminatory in principle.

The protection provided through Law No. 13 of 2006 is a special protection given to witnesses and victims where the weight of the threat or the level of damage suffered by the witness and or victim is determined through a determination process by the LPSK. The definition of protection in Article 1 point 6. Protection is all efforts to fulfill rights and provide assistance. Furthermore, Article 4 of Law No. 13 of 2006 states that the protection of witnesses and victims is aimed at providing a sense of security to witnesses and/or victims in providing information in every judicial process.

Article 5 of Law No. 13 of 2006 Article 6 and Article 7 serve as references regarding rights, forms of protection, and forms of assistance guaranteed by law. In Article 5, there are 13 rights of witnesses and or victims which in the context of providing protection will be provided by LPSK. In Article 5, the LPSK Law states that the main protection needed is the protection of personal, family, and property security, as well as being free from threats related to his testimony in the ongoing case process. For more details what human rights and or victims can be granted by LPSK can be seen in the table. In addition to Article 5, victims also have the right to compensation and the right to restitution as stipulated in Article 7 of the PSK Law. According to the PSK Act,

The legal protection given to rape victims is that if the victim is depressed and his family knows, then he is taken to a psychiatrist with the approval of his family. Meanwhile, if the victim's family is not known, it will be placed in a safe house (shelter).

In the event that the victim receives a threat from the perpetrator, the Police will form a Polmas in collaboration with the local kelurahan. This is intended to supervise/control the victims of the crime of rape.

3.2. Obstacles to Legal Protection of Victims of the Crime of Rape in Positive Criminal Law

To realize the protection of rape victims both directly and concretely as well as indirectly and concretely is not an easy task, but it is a heavy responsibility and action, because the problem is not only about one aspect, but a very complex one.

Even though in fact there are many institutions/foundations/units that address the issue of women who are victims of violence (rape), there is still too little that can be done in terms of its relevance to the protection in question. Concerns that are carried out in the form of assistance are sometimes still sporadic and the assistance is still very limited.

In the application of legal protection to victims of crime, especially victims of rape, many victims or their families refuse to report violence against them for various reasons, such as fear of threats from the perpetrator or fear that if the problem is reported it will cause disgrace to the victim and her family. In fact, from a juridical

perspective, this omission can harm the victim himself, in the form of prolonged suffering. Likewise, the absence of reports or complaints from victims or their families will prevent the criminal justice process against perpetrators of violence from proceeding. The same thing can be found in victims of serious human rights violations, where when the victim (family) will submit a complaint report to the authorities or will testify in court,

Even though law enforcement officers (police) have tried various ways to overcome this obstacle, such as by establishing a Special Service Room in almost every resort police (polres), or cooperating with the hospital, in reality there are still rape victims who do not want to report their cases. to the authorities.

Based on the description above, in the implementation of protection for victims of the crime of rape, not all of them can be given, because in its implementation there are still many obstacles. These obstacles can come from the victim or from law enforcement officers.

Constraints that arise that come from the victim's self, namely: the victim himself who wants not to be protected by the police, so that the victim's rights are not implemented. For example, in order to protect the victim from the perpetrator, the victim is evacuated to a safe house, but the victim is not willing to be placed in a safe house provided by the police. He even fled to his family's house. This could be due to the victim's lack of trust in the police.

3.3. Legal Protection Against Victims of Rape Based on Justice Values

The purpose of witness and victim protection according to Law no. 13 of 2006 concerning the protection of witnesses and victims is to provide a sense of security to witnesses and/or victims in providing information in every criminal justice process. The sense of security here can be interpreted as being free from threats, so that they do not feel threatened or intimidated by their rights, life, body, property, and family. What is meant by threats are all forms of actions that cause direct or indirect consequences that cause witnesses and/or victims to feel afraid and/or forced to do or not do something related to giving their testimony in a criminal justice process.

Indonesia is a country based on law. So the State of Indonesia is obliged to provide human rights protection to each of its people. While a state of law is a state based on the rule of law. Law is sovereign. The state is a legal subject, in the sense of *rechtstaat*. Because the country is seen as a legal subject, if he is guilty he can be prosecuted in court for violating the law. Just as the victim in a crime has interests that must be protected.

Protection of witnesses and victims is nothing but respect and appreciation for the position of witnesses and victims in a case. Protection for witnesses/victims is often weaker. Court proceedings aim to punish the perpetrator, but do not always provide a decision that compensates the victim. In protecting the rights of witnesses and victims, the Government established an institution called the Witness and Victim Protection Agency (LPSK). Witness and Victim Protection Agency, hereinafter abbreviated as LPSK, is an institution that has the duty and authority to provide protection and other rights to Witnesses and/or Victims as stipulated in the Law. Witnesses and victims are components involved in criminal cases. Many witnesses and

victims need protection in an effort to participate in uncovering a criminal act. With the existence of Law No. 13 of 2006 concerning the protection of witnesses and victims (UUPSK) is expected to be given to the maximum for witnesses and victims. The purpose of witness and victim protection according to Law no. 13 of 2006 concerning the protection of witnesses and victims is to provide a sense of security to witnesses and/or victims in providing information in every criminal justice process. The sense of security here can be interpreted as being free from threats, so that they do not feel threatened or intimidated by their rights, life, body, property, and family. With the existence of Law No. 13 of 2006 concerning the protection of witnesses and victims (UUPSK) is expected to be given to the maximum for witnesses and victims. The purpose of witness and victim protection according to Law no. 13 of 2006 concerning the protection of witnesses and victims is to provide a sense of security to witnesses and/or victims in providing information in every criminal justice process. The sense of security here can be interpreted as being free from threats, so that they do not feel threatened or intimidated by their rights, life, body, property, and family. With the existence of Law No. 13 of 2006 concerning the protection of witnesses and victims (UUPSK) is expected to be given to the maximum for witnesses and victims. The purpose of witness and victim protection according to Law no. 13 of 2006 concerning the protection of witnesses and victims is to provide a sense of security to witnesses and/or victims in providing information in every criminal justice process. The sense of security here can be interpreted as being free from threats, so that they do not feel threatened or intimidated by their rights, life, body, property, and family.

4. Closing

The implementation of the protection of the rights of rape victims as stipulated in the criminal law has not been fully implemented, the factors have not been implemented due to the law, law enforcement officers, community culture and factors of facilities or facilities. Based on this situation, the rights of rape victims must be regulated and integrated through the lawcriminal Indonesia is the right to get restitution and or compensation, legal assistance, psychologist, psychiatrist, religious expert or other expert who is able to restore the victim's trust, restore the victim's good name, the right to obtain appropriate information and services in following the development of the case, the right to obtain security in reporting and as a witness. Whereas the obstacles that arise are from the victim, namely: the victim herself who wants not to be protected by the Police, because the rape victim refuses to report the violence that has happened to her for various reasons, such as fear of threats from the perpetrator or fear if the problem occurs. reported will cause disgrace to the victim and his family, so that the rights of the victim are not implemented.

Protection of witnesses and victims according to Law no. 13 of 2006 concerning the protection of witnesses and victims is to provide a sense of security to witnesses and/or victims in providing information in every criminal justice process. The sense of security here can be interpreted as being free from threats, so that they do not feel threatened or intimidated by their rights, life, body, property, and family. However, the absence of demands from victims such as asking for protection in terms of

physical, psychological, social, and material aspects shows that the victim in this rape case is one of the reasons why the victim did not submit a request for protection.

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