

Legal Protection On Children As Witness Of Victims In Criminal Justice

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Abstract

Indonesia's legal protection is inadequate for children as witnesses of victims of criminal acts of decency in the criminal justice process. The objectives of the research include: To analyze the implementation of legal protection for children as witnesses of victims of crime of decency in the criminal justice process at the Kendal District Court, To analyze the treatment of children as witnesses to victims of criminal acts of decency during the criminal justice process at the Kendal District Court and for analyzing the obstacles and solutions in providing legal protection to children as witnesses of victims of crime of decency in the criminal justice process at the Kendal District Court. In this study, a sociological juridical approach is used, an approach used in dealing with problems discussed based on applicable regulations and then linked to the reality that occurs in the community. Based on the research, the conclusion is: Implementation of Legal Protection for Children as Witnesses to Victims of Crime of Decency in the Criminal Court Process against children as victims of decency crimes in the form of legal protection in the form of: Restitution and Compensation, Counseling, Medical Assistance, Legal Aid and Information Providing. Treatment of Children as Witnesses to Victims of Criminal Actions of Decency during the Criminal Court Process Law enforcement officials still treat women victims of child sexual abuse as objects, not subjects that must be heard and respected for their legal rights and Constraints and Solutions in the Kendal District Court. The victim feels traumatized as a result of this case in providing testimony at the trial and the solution and solution to these obstacles is that victims of criminal acts of sexual immorality continue to be given support from both family and community.

Keywords: Legal Protection, Children, Victims, Crime of Decency, Criminal Justice Process

1. Introduction

Children are not adults in small form, but humans who because of their condition have not yet reached the stage of mature growth and development.¹ Protection of children is the foundation for children to become adults in

¹Suryana, 1996, *Keperawatan Anak untuk Siswa*. Jakarta. BGC, p. 33

responding to future challenges.² Children are meant to grow and develop optimally, whether physically, mentally, socially, or spiritually.³

Such power is known as a right.⁴ This guarantee is strengthened through the ratification of international content on Rights Children, namely the ratification of the Rights Convention of Child through a presidential decree Number 36 of 1990 concerning Ratification of Convention on the Rights of the Child.⁵ The issue of legal protection for children to protect Indonesian children. the problem cannot be approached juridically, but it needs a broader approach, namely economic, social and cultural.⁶

A big problem in the criminal law enforcement system, especially in children, is the effect on psychological development and the future of children.⁷ Every child has a dignity that deserves to be upheld and every child who is born must get his rights without the child asking for it.⁸ In terms of the nation and state, the child is complete, the potential and the younger generation who are the successors of their dreams.⁹ The goal is to create a judiciary that truly guarantees the protection of the best interests of those facing the law as the successor of the nation.¹⁰ In carrying out of protection efforts of children's rights by Government must be based on pprinciples of human rights, namely respect, fulfillment and protection of children's rights.¹¹

Legal protection as an illustration of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace.¹² Protection of Indonesian children means protecting the potential of human resources and developing the whole Indonesian people, towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Constitution.¹³ LPSK institutions must be developed and strengthened in order to carry out their duties, functions and authorities.¹⁴

²Nasriana, *Perlindungan Hukum Pidana Bagi Anak di indonesia*, Raja Grafindo Persada, Jakarta, 2011, p.13

³Abu Huraerah. *Kekerasan Terhadap Anak*. Bandung. Nuansa Cendikia. 2012. p. 11

⁴Satipto Rahardjo, *Ilmu Hukum*, PT.Citra Aditrya Bakti Bandung, 2012, p.53

⁵Presidential decree Number 36 of 1990 concerning Ratification of Convention On The Rights Of The Child

⁶ Abdul Hakim Garuda, 2013, *Proses Perlindungan Anak*, Jakarta p. 22

⁷Zaenal Abidin, *Penerapan Diversi Terhadap Anak dibawah Umur Sebagai Pelaku Tindak Pidana*, *Jurnal ilmiah*, Accessed on April 2020

⁸Dheny Wahyudi, 2015, *Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Pendekatan Restorative Justice*, *Jurnal Ilmu Hukum*, p. 144

⁹Imran Siswandi, *Perlindungan Anak Dalam Perspektif Hukum dan Ham*, *Jurnal Al Mawarid (Jurnal Hukum Islam)* Vol.11, No.2, January 2011, p.226

¹⁰Act No. 11 of 2012 concerning the Juvenile Justice System

¹¹Explanation Act No. 17 of 2016 concerning the establishment of government regulations in lieu of Act No. 1 of 2016 concerning Child Protection

¹²Koesparmono Irsan. *Hukum Perlindungan Anak*. Jakarta. Faculty of Law, Veterans National Development University, Jakarta. 2007. p. 8

¹³Nashriana. *Perlindungan Hukum Pidana Bagi Anak di Indonesia*. Jakarta. Rajawali Pers. 2011. p. 1

¹⁴Elucidation of Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims

Justice services for victims to criminal acts are still not satisfactory.¹⁵ Victims of crime seem forgotten.¹⁶ concretely, the victim has not received proportionate attention.¹⁷ Adolescents and children who easily enjoy television shows that are not the time to be watched but which are not suitable for viewing for children under 18 years of age or the proliferation of pornographic VCDs circulating illegally which are disseminated.¹⁸ "Certain cases" include corruption, narcotics / psychotropic crime, terrorism, and other crimes that result in the position of Witnesses and Victims being exposed to situations that are very dangerous to their lives.¹⁹

In the research journal Sri Endah Wahyuningsih, this research focuses more on children who are victims of rape or sexual immorality who often experience prolonged trauma due to the incident. Justice services for victims to criminal acts are still not satisfactory.²⁰

2. Research Method

In this study, the research specification is used in a descriptive analytical manner and Sociological juridical approach,²¹ because the results of the research obtained only describe life within a social sphere or describe the applicable laws and regulations that are associated with law science and a situation accurately and factually.

Primary data were interview attempts with sources, namely judges, victim witnesses and the Kendal District Court clerk. ingredient secondary in the form of books, documents, papers, journals, theses and the internet. qualitative analysis techniques related to problems in research, namely regarding the legal protection of child victims of decency crime.

3. Results And Discussion

3.1. Implementation of Legal Protection for Children as Victims of Crime of Decency in Kendal District Court

Adequate protection of the law for victims of crime is not only a national issue, but also an international issue, therefore this issue needs serious attention.²²

Based on the results of the interview conducted by the author at the Kendal District Court which was supervised by the Panel of Judges, Mr. Hajar Widiyato SH,

¹⁵Arif Gosita, 1983, *Masalah Korban Kejahatan*, Jakarta: Akedimika Pressindo, p.122

¹⁶Adhi Wibowo, 2013, *Perlindungan Hukum Korban Amuk Massa*, Yogyakarta: Thafa Media, p.38

¹⁷J.E . Sahetapi, *Viktimologi Sebuah Bungai Rampai*, Jakarta, Pustaka Sinar Harapan, 1987, p.3

¹⁸Barda Nawari Arief, *Op.Cit*, p. 55

¹⁹Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims, Visimedia Jakarta, 2007

²⁰Arif Gosita, 1983, *Masalah Korban Kejahatan*, Jakarta : Akedimika Pressindo, p.122

²¹ Ronny Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurimetri*, Jakarta:PT.Ghalia Indonesia, 1990, p.22

²² Dikdik M.Arief Manshur-Elisatris Gultum,*Op.Cit*,p.23

MH and the Legal Clerk Mrs. Marfuatun SH, he explained that from the beginning of the examination to the trial stage on research on legal protection for child victims of decency crime in Kendal District Court decision Number 70 / Pid.sus /2018/PN.Kdl.²³In the settlement of criminal cases, the law places too much importance on the rights of the suspect / defendant, while the rights of victims are neglected, as stated by Andi Hamzah: matters relating to the rights of the suspect without paying attention to the rights of the victim ".²⁴

Whereas against the public prosecutor's demands, the Defendant through his legal adviser in writing submitted his defense / petition which basically asked the Panel of Judges to issue a decision that was as light as the light on the grounds that the defendant in the environment was known as a good public figure. protection of victims that is usually associated with resolving conflicts caused by criminal acts will restore balance and bring about a sense of peace in society.²⁵

Legal protection measures in the form of assistance other than legal aid as stipulated in Article 18 of Act No. 35 of 2014 concerning amendments to Act No. 23 of 2002 concerning Child Protection, include counseling and medical assistance.

- a. Counseling. Counseling is a form of legal protection provided to child victims of criminal acts committed in women's empowerment institutions as regulated in Article 34 of government regulation Number 44 of 2008 concerning the provision of compensation, restitution and assistance to victim witnesses.
- b. Medical Services / Assistance. Providing medical assistance in Article 18 of Act No. 23 of 2002 concerning child protection, and also regulated in Article 34 of Government Regulation Number 44 of 2008 concerning the provision of Compensation, Restitution and Assistance to witnesses and victims in Article 20 to Article 33 has regulated the compensation for loss (restitution) from the perpetrator of the crime to the victim of the crime.
3. Legal Aid. In Article 1 paragraph (1) of Act No. 16 of 2011 concerning legal aid, it is stated that what is meant by legal aid is legal services provided by legal aid providers free of charge to recipients of legal aid.

3.2. Treatment of Children as Witnesses to Victims of Crime of Decency during the Criminal Court Process at Kendal District Court

The treatment that the victim receives during the criminal justice process is one of the forms of the criminal justice process, is a form of legal protection for the child witnesses who are victims of crime of decency. From the results of research conducted in Kendal regarding the protection of children as witnesses of victims of crime of decency, there are a number of rapes in several areas in Central Java

²³ Interview, with Mr. Hajar widiarto, SH, MH, Judge at Kendal District Court, June 8, 2020 at 10:00 WIB

²⁴ Andi Hamzah , *Perlindungan Hak Asasi Manusia dalam Kitab Undang - Undang Hukum Acara Pidana*, Bandung,1986,p.33

²⁵ Muladi, *Perlindungan Korban dalam Sistem Peradilan Pidana : Sebagaimana dimuat dalam Kumpulan Karangan Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, Semarang, Badan Penerbit Universitas Diponegoro, 1997, p.172

Province, the relationship between perpetrators and children as witnesses of victims of decency crime, age of perpetrators and victims of decency crime. , settlement of cases of child sexual abuse in Kendal, prosecutors and court verdicts against rape cases in Kendal, forms of child sexual abuse cases resolution, and modes of child sexual abuse cases . Not all of the victims and their families have registered cases of sexual abuse. Because there are several considerations that make them not / have not chosen the legal route.

From the monitoring data in 2018, every area in Kendal district has a larger case record when compared to the previous year. But once again, these cases are reported in the media and reported by LRC-KJHAM so there are many possibilities why in one area the case records are higher, such as: media attention in reporting cases of violence against women so that in one area there are many news regarding cases of violence against women, the courage of the community to report the protection mechanisms in the area thus encouraging the courage to report the cases.

The modes used by the perpetrators to deceive the victim vary widely. Meanwhile, cases of sexual abuse against children whose victims are children of the perpetrators use the lure of money, drinks and food. only when the victim is trapped in the mode device the victim was designed to threaten and molest.

The background and factors that cause the perpetrator's actions are that the perpetrator has a bad temper in his daily life. Because suffering from a disease. The victim lost her honor and was traumatized when she did the incident in front of her friends.²⁶

Treatment received by the victim during the criminal justice process;

a. In the Police

When reporting to the Kendal Police on April 3, 2018, the victim and his mother were accompanied by the victim's relative. The perpetrator was immediately arrested after the report denied that he had molested the victim, but after being pressured by the investigator the perpetrator finally admitted his actions. In accordance with the Police Report Letter Police Number: SP .Han / 50 / IV / 2018 / *Reskrim*, a legal process is carried out and the perpetrator is subject to Article 81 of Act No. 1 of 2016 concerning Children Protection Articles 287 and 294 of the Criminal Code.

b. At the Prosecutor's Office

After the investigation process at the Police Kendal which was quite convoluted, finally the file was submitted to the Kendal District prosecutor on April 20, 2018, with Number B-017 / 0.3.27.3 / Euh.1 / 04/2018, initially the process went smoothly so that on the date and the first trial was held on June 1, 2018.

c. At Court

²⁶ The Residential House is a residence for victims of violence, which will provide protection, welfare, assistance so that victims avoid violence and solve problems accompanied by the Kendal police.

There were obstacles in the trial process, because it turned out that the summons for examination of victim witnesses did not reach the person concerned. It is highly probable that the address of the summons will be shown where the victim's mother lives, while since the incident the victim has been living together. Based on information from the prosecutor, the victim's witness can be presented in court. examination of witnesses and defendants, prosecution, defense, and verdicts carried out in court since 24 May 2018 Number 80 / Pen.Pid / 2018 / PNkdl, from 24 May 2018 to 22 June 2018 with a series of 12 years imprisonment and a verdict in the form of 10 years imprisonment and a fine of 60 million rupiah in 3 months imprisonment.

3.3. Constraints in Providing Legal Protection for Children as Witnesses to Victims of Criminal Acts of Decency in the Criminal Court Process at Kendal District Court.

Based on the research I described above in the case decision 70 / Pid.sus /2018/PN.Kdl. In handling cases of violence against women, especially the criminal act of child sexual abuse, law enforcement officials still experience obstacles, in general they face internal and external obstacles:

- a. Internal Barriers; The first obstacle that will occur from an internal perspective, namely the number of activities, the wide scope of activities covering all law enforcement agencies and work partners. The large number of parties involved from various institutions in monitoring the implementation of each activity.
- b. External Barriers; External barriers consist of several kinds, the first is that there is a difference in understanding. This has been predicted since the beginning of designing the PPH program. Introducing the concept of a law enforcement system with a gender perspective, we realized that it would not be easy to turn your palms around.

The obstacles and efforts faced by the victim in a crime of decency are due to the following:

- a. Victim witness summons; Usually the victim is ashamed because the incident has defamed himself, physically and socially to the environment at his school, the family also has an obligation to protect the victim's witness so that he is not willing to come to the trial in court "even though the bailiff has summoned him with a summons (Article 112 paragraph (2) Criminal Procedure Code.
- b. Information provided by the victim; "The victim feels traumatized to explain what happened to him, so he does not give an honest explanation". The result of the case in providing testimony in the trial that is unclear and does not correspond to the question made by the judge. Because the victim is still 7 years and 8 months old, he does not understand the questions given by the Panel of Judges (Article 116 paragraph (2) Criminal Procedure Code
- c. The victim is worried that the defendant or the perpetrator will retaliate. (the defendant) who had committed a criminal act against him in the form of

intimidation by the perpetrator (the defendant) against the victim and his family. The victim's family tries to judge the perpetrator themselves, because they have violated their child. The victim's family reports to the investigator to get legal protection from law enforcement and so that the victim knows that he is a form of criminal act against children.

4. Closing

4.1. Conclusion

The implementation of legal protection for children as victims of decency crime at the Kendal District Court in the form of: Providing Restitution and Compensation, Counseling, Medical Assistance, Legal Aid and Information Providing; Treatment of Children as Witnesses to Victims of Criminal Acts of Decency During the Criminal Court Process at Kendal District Court Law enforcement officials still treat women victims of (violence) child sexual abuse as objects, not subjects that must be heard and respected for their legal rights; Constraints in implementing legal protection for children as victims of decency in the Kendal District Court, namely: Calling witnesses for Victims Solution is that victims of sexual immorality continue to be given support from both family and community so that they can eliminate trauma to the crime that has befallen them and the need for victims to obtain or obtain material compensation to cover the costs incurred by the victim.

4.2. Suggestions

Law enforcement officials in providing services and protection to women victims of child sexual abuse. The protection of victims of crime of decency should first be given to victims to provide motivation and hope for victims of immorality; Witness and victim protection agency (LPSK) to protect victim witnesses. There should be a witness and victim protection agency (LPSK), not only in the city because there is no witness and victim protection agency (LPSK) at every level of Kendal Regency.

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- Elucidation of Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims
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- Presidential decree Number 36 of 1990 concerning Ratification of Convention on the Rights of the Child

Interview:



Interview, with Mr. Hajar Widiarto, SH, MH, Judge at Kendal District Court, on June 8, 2020 at 10:00 WIB