

Legal Protection for Child Victims of the Crime of Rape in Decision Number 239/PID.SUS/2022/PN.CLP

Setiyawati¹⁾ & Achmad Arifullah²⁾

¹⁾ Advocate in Cilacap, E-mail: setyoowatii2021@gmail.com

²⁾ Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: achmadarifulloh@unissula.ac.id

Abstract. *This research aims to understand and analyze legal protection for child victims of criminal acts of rape in decision Number 239/Pid.Sus/2022/PN.CLP and the judge's considerations in providing legal protection for child victims of rape. The approach method is normative juridical, descriptive analytical research specifications, the data type uses secondary data, the data collection method is through library research, while the data analysis method is qualitative analysis. Based on the research results, it was concluded that the crime imposed by the judge in decision Number 239/Pid.Sus/2022/PN.CLP had provided sufficient legal protection for child victims of the crime of rape, but it was still in the form of abstract protection and there was no real legal protection, for example rehabilitation. The judge's considerations in decision Number 239/Pid.Sus/2022/PN.*

Keywords: Children; Protection; Victims.

1. Introduction

The 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3) states that the State of Indonesia is a legal state.¹This means that all actions and behavioral patterns of citizens must also be upheld, synchronized with the norms

¹Mohamad Andi Rochman, Aryani Witasari, and Peni Rinda Listyawati, Analysis of Legal Protection Measures on Children's Rape Victims through Child Criminal Judicial Mechanism, Law Development Journal, Volume 4 Issue 2, June 2022, p. 239.

set by the state. Thus, Indonesia guarantees human rights in the legal field, namely guaranteeing citizens the same position in law and government.²

Law is something abstract, cannot be seen and cannot be touched.³ Law is a collection of coercive regulations that determine human behavior in society, which are made by official state bodies and contain strict sanctions for these regulations.⁴ The law works by providing guidance on behavior and functions as a form of social control in society, so that behavior that deviates from the law does not occur.⁵

One of the acts that deviates from the law is the crime of sexual intercourse or rape. As a normal human being, the desire to have sexual relations with the opposite sex is a natural trait and it is hoped that this distribution will be carried out correctly and in accordance with applicable norms. These natural properties are not always used properly, so that sometimes unwanted deviations occur which can result in physical and psychological suffering.

The crime of rape is a violation of human rights, especially against women. The crime of rape is very disturbing among the public, especially what is even more worrying is that the victims of this crime are minors. This is because it has a very deep impact on children both physically and psychologically, where the victim cannot forget this incident.⁶

Victims of rape that befall children who are still minors are stated in Article 287 paragraph (1) of the Criminal Code (KUHP) which states "anyone who has sexual intercourse with a woman outside of marriage, even though it is known or should be reasonably suspected, that she is not yet five fifteen years, or if the child is not yet capable of marriage, is threatened with a maximum imprisonment of nine years."⁷

Currently, the criminal act of sexual intercourse (rape) with a child victim is regulated in Law Number 35 of 2014 concerning Child Protection as most recently amended in Law Number 17 of 2016 (hereinafter referred to as the

²Anton Rudiyanto, Function of Fingerprints of Murder Perpetrators (Case Study at Tegal Police), *Khaira Ummah Law Journal*, Volume 12 Number 4 December 2017, p.928.

³Sri Endah Wahyuningsih, Wilsa, HR. Mahmutarom, Implementing Child Welfare in Indonesian Community Institutions, *International Law Journal*, Volume 4 Issue 5, September 2018, p.40.

⁴Ishaq, 2012, *Basics of Legal Science*, Jakarta : Sinar Graphics, Jakarta, p. 3.

⁵Mulyadi, Mulyadi, 2022, *The Legal Position of Fingerprints in Revealing the Crime of Murder at the Blora Police Station (Police Report Study No. LP/B/05/II/2022/SPKT Cepu Police/Blora Police/Central Java Police)*, Thesis, Semarang : Unissula , p.1

⁶Sri Endah Wahyuningsih, Legal Protection for Children as Victims of Moral Crimes in Current Positive Criminal Law, *Journal of Legal Reform*, Volume III Number 2, May-August 2016, p.172.

⁷Moelyanto, *Criminal Code*, PT. Bina Literacy, Jakarta, 1985, p. 125.

Child Protection Law). Regulations regarding the criminal act of rape (sexual intercourse) are regulated in Article 76D of the Law Child Protection states that "Everyone is prohibited from using violence or threats of violence to force a child to have sexual intercourse with him or another person." The criminal threat for perpetrators of the crime of rape against minors is as regulated in Article 81 of the Child Protection Law, namely being punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000. ,000.00 (five billion rupiah). In the event that the criminal act is committed by a parent, guardian, child caregiver, educator or educational staff, the penalty is increased by 1/3 (one third) of the criminal threat as intended in paragraph (1).

Cases of the crime of rape have existed for a long time, but to this day there are still pros and cons regarding its conception and understanding, as well as how to deal with it, especially in developed countries. The initiative of victims of rape crimes to report to the police apparently shows low intensity when compared with crimes of robbery, murder and other crimes. This offense causes the most difficulties in solving it both at the investigation, prosecution and court stages. Apart from difficulties in terms of boundaries, there are also difficulties in proving, for example rape or obscene acts which are generally carried out without the presence of other people.⁸

Specifically for legal protection of children, the state pays attention by passing the Child Protection Law which emphasizes the importance of increasing criminal sanctions and fines for perpetrators of crimes against children to provide a deterrent effect, as well as to encourage concrete steps to restore them physically, psychologically and also. social activities of children as victims and/or children as perpetrators of crimes as an anticipatory step so that children as victims or as perpetrators do not become perpetrators of the same crime in the future.

The role of all parties from the government, society, to law enforcement officials is very necessary to overcome crimes against children. Apart from that, the role of the judge in deciding the sentence against the perpetrator of the crime of raping a child also plays an important role in providing a deterrent effect against perpetrators of child abuse.

Even though the government has enacted child protection laws, in practice there are still many children who become victims of criminal acts. In Central Java, criminal acts of sexual violence against children still dominate by type violence other. The Central Java Province Women's and Children's Service

⁸Leden Marpaung, 1996, Crimes Against Morality and Problems of Prevention, Jakarta : Sinar Grafa, p. 81.

said that by June 2022, there were 257 child in Central Java become victims of sexual violence. As for the victims of sexual violence to child in 2021 there will be 807 child. If presented, more than 50 percent experienced sexual violence compared to violence other types.⁹

One of the sexual violence against children is the crime of rape, and sometimes the perpetrator is someone closest to the child, namely the child's family or relatives. One example of a criminal case of rape with a child victim is in Decision Number 239/Pid.Sus/2022/PN.CLP", namely a case of rape committed by a father against his own biological child. This is of course very worrying, where parents who should provide protection for their children have actually committed sexual violence against their own biological children.

Based on the description above, this research aims to determine and analyze the legal protection for child victims of the crime of rape in decision Number 239/Pid.Sus/2022/PN.CLP along with the judge's considerations.

2. Research Methods

This research approach method is normative juridical namely originating from principles, norms, rules from statutory regulations, court decisions.¹⁰ The research specifications are descriptive analytical in nature, namely describing the applicable laws and regulations linked to legal theory and the practice of implementing positive law regarding problems.¹¹ The type of data uses secondary data, the data collection method is through literature study and the data analysis method uses qualitative analysis.

3. Results and Discussion

3.1. Legal Protection for Child Victims of the Crime of Rape in Decision Number 239/Pid.Sus/2022/PN.CLP

The crime of rape is an act that is very heinous, immoral, disgraceful and violates norms, so it cannot be separated from the morals that apply in society. Moreover, as an Eastern society that upholds the value of decency, criminal acts of decency have their own meaning. This can be interpreted as the existence of a crime of decency in a society, which also means that in that society there is a moral turmoil going on which is felt to be very disturbing to the community,

⁹Siswo Ariwibowo, Child Violence Still Dominates in Central Java, Cilacap Tops Rank, <https://www.warnamerdeka.com>, accessed May 20, 2023.

¹⁰Mukti Fajar ND and Yulianto Achmad, 2013, Dualism of Normative and Empirical Legal Research, Yogyakarta: Student Library, p. 34.

¹¹Roni Hanitijo Soemitro, 1988, Legal Research Methods and Jurimetry, Ghalia Indonesia, Jakarta, p.35.

because morals are a prime value that is highly respected and placed at the top.¹²

Victims of criminal acts of rape, especially children, are victims of crime who need legal protection. Children need to have the widest possible opportunities to grow and develop optimally, both physically, mentally, socially and spiritually.¹³ Considering that children are the foundation and hope of parents and will also be the nation's successors, they must be protected and given love.¹⁴

In decision Number 239/Pid.Sus/2022/PN.CLP the defendant was sentenced to 5 years in prison and a fine of 1 billion subsidiary 3 months in prison. According to researchers, the criminal sentence imposed on the perpetrator of the crime of rape is commensurate with the suffering experienced by the victim, where the victim is his own biological child who is still a minor. Fathers who should protect their children actually destroy their children's future.

According to the criminal writer, the sentence imposed on the perpetrator is sufficient to provide legal protection for the victim. However, in the case example, it does not include direct legal protection, namely in the form of rehabilitation for the victim. Protection of victims through criminal decisions is more indirect (abstract). Indirect protection is basically a form of protection that can only be enjoyed or felt emotionally (psychically), such as a sense of satisfaction (satisfaction), while concrete protection is basically a form of protection that can be enjoyed in real terms, such as providing compensation in the form of or material or non-material. For children who are victims of the crime of rape, direct protection is as regulated in Article 59A of the Child Protection Law, namely receiving physical, psychological and social treatment and/or rehabilitation as well as prevention of disease and other health problems, psychosocial assistance during treatment until recovery or providing social assistance for children from disadvantaged families.

3.2. Judge's Considerations in Decision Number 239/Pid.Sus/2022/PN.CLP in Providing Legal Protection for Child Rape Victims

Based on the judge's decision, it can be seen that what the judge takes into consideration in imposing a crime is the juridical factor, namely the fulfillment of the elements of a criminal act in Article 76D of Law Number 35 of 2014 in conjunction with Article 81 paragraph (1) in conjunction with paragraph (3) of

¹²Alice Auxiliadora Marques Cabral, Ruddy Watulingas, and Harly S. Muaja, Legal Study of the Crime of Rape of Minors, *Lex Privatum*, Vol. 10 No. 5, 2022.

¹³Abu Huraerah, 2012, *Violence Against Children*, Bandung: Nuansa Cendikia, p. 11

¹⁴Ardyaningsih Puji Lestari, Arfa, and Andi Najemi, Legal Protection for Child Rape Victims in the Legal Area of the Jambi District Court, *Journal of Legal Sciences*, Volume 7, Number 1, March, 2016, p. 85

Republic of Indonesia Law No. 17 of 2016 (Child Protection Law), namely the elements of every person; elements of violence or threats of violence forcing the child to have sexual intercourse with him or another person; and elements carried out by parents, guardians, child caretakers, educators, or educational personnel. By fulfilling the elements of a criminal act as charged by the prosecutor and not finding anything that eliminates criminal responsibility, the defendant is declared guilty and subject to a crime.

The judge also considered comprehensive treatment, namely looking at the coaching aspect for the defendant to realize his mistakes and not repeat his actions again. Apart from that, it also looks at the social and community implications within the framework of preventive, educative and corrective criminal objectives, so that it is able to fulfill a sense of justice for the victim and the community because basically the defendant is the biological father of the victim's child who is supposed to look after, defend, protect and educate the victim's child so that the child The victim grew up like a child who was ready to face a bright future, and the defendant's actions certainly caused trauma for the victim's child and this will affect the mental health of the victim's child who is still a teenager.

According to the author, the judge's considerations in Decision Number 239/Pid.Sus/2022/PN.CLP are correct, so they can provide legal protection for child victims of rape. The judge's considerations in this decision were in accordance with the theory of legal protection. According to Muchsin, legal protection is something that protects legal subjects through applicable laws and regulations and its implementation is enforced with sanctions.¹⁵In his legal considerations, the judge took into account the victim, namely the condition of the victim's child, which as a result of the defendant's actions could cause trauma and would affect the mental health of the victim's child, who is still a minor. Meanwhile, the consideration from the defendant's side was that as the biological father of the victim's child, he was supposed to protect and look after the victim's child, but instead he had damaged the child's future.

Based on the judge's considerations, the defendant was sentenced to 15 years in prison and a fine of 1 billion rupiah, subsidiary to 3 months' imprisonment. The judge's considerations in the decision aim to provideprovide protection for human rights (child victims) and for the community, namely to regulate behavioral relationships between members of the community in order to create a balance between rights and obligations in social life.

The judge's considerations on the decisionDecision Number 239/Pid.Sus/2022/PN.CLP is also in accordance with the theory of justice according to Aristotle which states that the measure of justice is that a person

¹⁵Muchsin, Op.Cit, p.20.

does not violate the applicable law, so that justice means according to the law or (lawful), that is, the law must not be violated and legal rules must be followed¹⁶

In this case, the judge has considered both the perpetrator and the victim's side before imposing a crime. The judge concreted the criminal sanctions contained in the Child Protection Law by imposing a prison sentence of 15 years and a fine of 1 billion, subsidiary to 3 months' imprisonment for perpetrators of the crime of raping a child.

In imposing a sentence, it is guided by the purpose of punishment, namely as a means of protecting society, rehabilitation, as well as psychological aspects to eliminate the feeling of guilt for the person concerned. Even though punishment is basically a misery, punishment is not intended to cause suffering and does not degrade human dignity.

The legal basis for judges so that when adjudicating cases they can be fair and wise is based on the 1945 Constitution of the Republic of Indonesia Article 24 Paragraph (1) which states that "Judicial power is an independent power to administer justice to uphold law and justice". Apart from that, Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power also regulates the principles of administering judicial power, where justice is carried out for the sake of justice based on belief in the Almighty God. This provision is emphasized in Article 5 paragraph (1) of Law No. 48 of 2009 which states that "Constitutional judges and justices are obliged to explore, follow and understand the legal values and sense of justice that exist in society".

4. Conclusion

The sentence imposed by the judge in Decision Number 239/Pid.Sus/2022/PN.CLP has provided sufficient legal protection for child victims of criminal acts of rape, but it is still in the form of abstract protection and there is no direct legal protection. The judge also took into account the condition of the victim's child, which as a result of the defendant's actions could bring trauma and affect the child's future, as well as consideration from the defendant's side, namely as the biological father of the victim's child who was supposed to protect and look after the victim's child, but instead damaged the future. child. For this reason, it is recommended that the judge also provide direct protection by rehabilitating the victim.

¹⁶Munir Fuady, 2010, Dynamics of Legal Theory, Bogor : Ghalia Indonesia, p. 93

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