

Legal Protection for Child Victims of Sexual Crimes

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Abstract. *The purpose of this research is to know and analyze the form of legal protection for child victims of sexual intercourse. To identify and analyze the factors that hinder legal protection for children as victims of sexual intercourse. The method used by the researcher is normative legal approach. The specifications in this study are descriptive. The sources and types of data in this study are secondary data obtained from literature studies. The data is analyzed qualitatively using the theory of legal protection and the theory of justice from an Islamic perspective. Based on the results of the research that forms of legal protection for child victims of sexual intercourse crimes are restitution and compensation. Schafer stated that there are 3 (three) systems for providing restitution and compensation to victims of crime, namely: a. Compensation that is civil in nature, is given through a civil process. This system separates the victim's compensation claims from the criminal process. b. Compensation that is civil in nature is given through a criminal process. c. Restitution that is civil in nature and mixed with a criminal nature is given through a criminal process. Medical Services/Assistance is given to victims who suffer medically as a result of a criminal act. Legal assistance is a form of assistance to victims of crime. In Indonesia, this assistance is mostly provided by Non-Governmental Organizations (NGOs). Factors inhibiting legal protection for children as victims of sexual intercourse include: factors of the victim themselves and factors of the perpetrator.*

Keywords: Children; Criminal; Legal; Protection.

1. Introduction

Country Indonesia as a country of law based on Pancasila must provide legal protection to its citizens in accordance with that stated in the Preamble to the 1945 Constitution, Paragraph IV, therefore legal protection based on Pancasila means recognition and legal protection based on Pancasila means recognition and protection of human dignity and honor based on the values of divinity,

humanity, unity, deliberation, and social justice. These values give rise to the recognition and protection of human rights in their form as individual beings and social beings in the framework of a unitary state that upholds the spirit of family in order to achieve mutual prosperity.

Criminal law occupies an important position in the entire legal system in a country. Although its benefits in establishing an orderly and peaceful society are still questionable, it is increasingly important to study its aspects to support the entire system of life in society. It is often said that criminal law is the *ultimum remedium* or last resort. But this is not the case for "public prosecutors" criminal prosecution should not end with the imposition of a sentence. Criminal prosecution is also useful for resolving criminal law violations.¹

In the Criminal Code (KUHP), provisions regarding criminal sanctions against perpetrators of sexual violence have actually been regulated, but in reality this crime still occurs in many places and is hidden in society. It is not uncommon for these cases to escape the clutches of applicable law, some even stop at the level of examination by the police or prosecutor's office so that they do not reach the court process. To realize the success of law enforcement in eradicating the rampant cases of sexual violence, it is very necessary to strengthen serious coordination of cooperation between the police, prosecutors and judges in court. The verdicts of judges examining cases of sexual violence in various courts vary. There are even cases of sexual violence against minors who are only sentenced to playing around with a six-month prison sentence. This can be justified because within the maximum and minimum limits (one day to twelve years) the judge is free to get the right sentence).²

Therefore, it is necessary to make efforts to increase public awareness of the law by enforcing the law consistently and consequently. Law enforcement in general can be interpreted as the application of law in various aspects of national and state life in order to realize order and legal certainty that is oriented towards justice. Specifically, law enforcement can be interpreted as a series of activities in the criminal justice system that are preventive, repressive and educational. Law enforcement is part of legal development which is an integral component of national development.

In enforcing and realizing legal certainty, the actions of law enforcement officers must be formally regulated, so that their actions do not contradict the law. This means that it does not only refer to the provisions of material criminal law, but also refers to formal criminal law, which is commonly called Criminal Procedure Law. Criminal Procedure Law is a formal law that contains provisions on how a trial process in the context of enforcing criminal law (material criminal law) in the

¹Andi Hamzah. 2010, Principles of Criminal Law, Rineka Cipta, Jakarta, p. 1

²M. Sholeh, Sri Endah Wahyuningsih, 2017, Analysis of the Implementation of Criminal Sanctions Against Perpetrators of Criminal Acts of Sexual Violence Against Minors at the Demak District Court Khaira Ummah Law Journal Vol. 12. No. 2

provisions of Criminal Procedure Law, the process of arresting a criminal case is described starting from investigation, inquiry, prosecution to the trial process.

Violent acts that occur in the community are increasingly disturbing. In resolving a conflict or problem accompanied by violent acts. In general, violent acts can be interpreted as the deliberate use of physical force or power, threats or actual violence against oneself, others, or against groups or communities, which result in injury or are likely to injure, kill, endanger the psyche, abnormal growth or loss.³

Basically, every person who lives in the world in fulfilling their needs cannot be done alone without others. Everyone must have a relationship with others to fulfill all their needs. There are relationships with legal consequences and there are relationships that do not have legal consequences. Relationships that have legal consequences with rights and obligations.⁴

Protection of children must be further improved considering the increasing number of crimes of this kind. Because as we know that children are the potential and reflection of the fate of humanity in the future, the younger generation and the successors of the nation's ideals who of course also play a role in determining history, So with this the State is obliged to protect and pay attention to their mental development because in any case children are gifts created by God Almighty who are inherent in their dignity as whole human beings and have the right to receive protection from the womb to birth. Sexual intercourse with children will certainly have an impact on the psychology and other developments of the child. The psychological impact on children will give rise to prolonged trauma which can then give rise to unhealthy attitudes, such as inferiority, excessive fear, disturbed mental development and ultimately result in mental retardation. Sexual crimes against children are despicable and inappropriate acts. This kind of behavior is an act that violates morality and damages a person's dignity.⁵

In general, it can be said that legal protection includes activities that are direct and indirect from actions that endanger children physically and/or psychologically. In the process of legal protection for child victims of sexual abuse, the principle of justice for children is emphasized. That is, justice in every child's case must reflect a sense of justice for the child. In addition, it is also

³Aan Hardiansyah, Akhmad Khisni, Jawade Hafidz, 2018, Criminal Acts of Violence in the Teaching and Learning Process Reviewed from the Perspective of Criminal Law and Law Number 14 of 2005 Concerning Teachers and Lecturers, in the Journal of Daulat Hukum Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, p. 88, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2622/1972>

⁴Euis Listianti and Umar Ma'ruf, 2018, Criminal Law Protection Of Giving Rights Of Liability Is Not The Debtor, in Journal of Sovereign Law Volume 1 (3), Published Master of Law, Faculty of Law Unissula, p. 589 <http://jurnal.unissula.ac.id/index.php/RH/article/download/3342/2470>

⁵Arif Gosita, 1983, Problems of Crime Victims, First Edition; Akademika Pressindo, Jakarta, p. 79.

necessary to consider the best interests of the child, namely that all decision-making must always consider the survival and development of the child.⁶

The objectives of this research are as follows: to find out and analyze legal protection for children who are victims of sexual intercourse. To identify and analyze the factors that hinder legal protection for children as victims of sexual intercourse.

2. Research methods

The method used by the researcher is normative legal approach. The specifications in this study are descriptive. The sources and types of data in this study are secondary data obtained from literature studies. The data is analyzed qualitatively using the theory of legal protection and the theory of justice from an Islamic perspective.

3. Results And Discussion

3.1. Forms of Legal Protection for Child Victims of Sexual Crimes

Job Moral offenses and sexual harassment are two forms of violations of morality which are not only a national legal problem in a country but are also a legal problem for all countries in the world or are a global problem.⁷ Pelal think that crimes against morality and sexual harassment are not dominated by those from the middle or lower economic classes, let alone those with little or no education at all, but rather the perpetrators have penetrated all social strata from the lowest to the highest.

Beraa number of sensitive issues affect women's lives, including crimes of sexual violence and sexual harassment. Currently, there is a lot of sexual harassment and exploitation, which affects adult women, and also children, which is carried out by people known to the victim, such as: fathers, uncles, teachers, neighbors. Sexual crimes can occur in families, offices, companies, or in certain places that provide opportunities for people of the opposite sex to communicate with each other.

The victim of a crime, who is basically the party who suffers the most from a crime, does not receive as much protection as the law provides to the perpetrator of a crime, as stated by Andi Hamzah,⁸ "In discussing criminal procedure law, especially those related to human rights, there is a tendency to examine matters related to the rights of the suspect without also considering the rights of the victim of a crime." The low position of the victim of a crime in handling criminal cases, this was also stated by Prassell who stated:

⁶Kismanto, Anis Mashdurohaturun, 2017, Legal Justice for Child Victims of Sexual Violence in Kendal Regency, *Khaira Ummah Law Journal* Vol. 12. No. 1 Unissula

⁷ Romli Atmasasmita, 1995, *Selected Chapters on Criminal Law and Criminology*, Mandar Maju, Bandung, p. 103

⁸Andi Hamzah, 1986, *Protection of Human Rights in the Criminal Procedure Code*, Binacipta, Bandung, p. 33

“Victim was a forgotten figure in the study of crime. Victims of assault, robbery, theft and other offenses were ignored while police, courts, and academicians concentrated on known violators.”

The issue of sexual crimes against children in the Indonesian criminal law system still tends to highlight crimes from the perspective of the perpetrator. Of course, this is less balanced if the perspective of the child as a victim is ignored. However, the elements that cause crime will not occur if there is no victim.⁹ Victim and the perpetrator are two elements of the crime. Therefore, protection of children as victims of sexual violence is very important.

Children as victims are less noticed, who so far have only been represented by the state as recipients of suffering, who will repay the perpetrators implemented with criminal sanctions that have been regulated by law. Punishing perpetrators of sexual crimes does not necessarily provide a sense of security for children as victims. Many victims have not received justice and the return of victims to society due to trauma. There needs to be a law that can provide justice for victims for what the perpetrators of the crime have done. So it is not enough to implement the revenge system needed to resolve the case.

Intercourse is included in the criminal act of indecency, sexual intercourse occurs due to seduction which results in intimate relations, according to the view Soesilo, In his book, the Criminal Code, along with a complete commentary on its articles, he provides the view that sexual intercourse can occur due to the union between the male and female genitals, resulting in the release of semen.¹⁰ So, in simple terms, sexual intercourse can be said to be an intimate relationship that is usually carried out to obtain sexual satisfaction or a way to have children. Sexual intercourse is a human act so that sexual intercourse is not included in a form of crime, but if this sexual activity is carried out not in accordance with applicable legal regulations, then the act carried out is said to be a sexual crime.

Intercourse with rape is often interpreted the same, based on what has happened, the perpetrator of sexual intercourse with a minor is given a lighter sentence than the perpetrator of rape whose victim is a more mature woman. Sexual intercourse with molestation also has differences, indecent acts do not require sexual intercourse, the act is considered to violate morality because it is included in the scope of lust, while sexual intercourse requires sexual intercourse.

Basically the regulation on the crime of sexual intercourse is to protect children from sexual crimes, the sexual intercourse occurs because of coaxing without any coercion or threat of violence. The crime of sexual intercourse is included in crimes against morality, which is regulated in chapter XIV book II of

⁹ Arif Gosita, 1983, Problems of Crime Victims, First Edition, Akademika Presindo, Jakarta, p. 87

¹⁰ Soesilo, R. 1980. Tactics and Techniques of Criminal Case Investigation. Politea, Bogor

the Criminal Code (KUHP) Article 286, Article 287 and Article 288 of the Criminal Code.

Meanwhile, children as victims of sexual intercourse are categorized as children who are in conflict with the law so that it cannot be distinguished which are the rights of children as victims of sexual intercourse and which are the rights of children as perpetrators of sexual intercourse. The existence of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence has changed the position of children as victims of sexual intercourse to children as victims of sexual crimes, as in Article 4 paragraph (2) letter c which in essence states that criminal acts of sexual violence also include one of which is sexual intercourse with children.

The use of criminal law as a means of overcoming crimes committed by children by placing children as perpetrators of crimes has a very complex negative impact, the imposition of criminal penalties on children will cause prolonged trauma to children so that it has a negative impact on children in their life development. But on the other hand, the use of criminal law as a means of overcoming crimes against children is considered a rational and legal choice.¹¹

Legal protection for children as regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 1 paragraph (2) "Child Protection is all activities that guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination."

Forms of Legal Protection for Child Victims of Sexual Intercourse Crimes are Restitution and Compensation Schafer stated that there are 3 (three) systems for providing restitution and compensation to victims of crime, namely: a. Compensation of a civil nature, given through a civil process. This system separates the victim's compensation claims from the criminal process. b. Compensation of a civil nature is given through a criminal process. c. Restitution of a civil nature and mixed with a criminal nature is given through a criminal process. Medical Services/Assistance is given to victims who suffer medically as a result of a criminal act. Legal assistance is a form of assistance to victims of crime. In Indonesia, this assistance is mostly provided by Non-Governmental Organizations (NGOs).

3.2. Factors Inhibiting Legal Protection for Children as Victims of Sexual Intercourse

The concept of child protection covers a broad scope in the sense that child protection is not only about protecting all rights and interests that can guarantee their growth and development properly, both spiritually, physically, and socially,

¹¹ Indira Hapsari, Eko Soponyono, and RB Sularto, 2016, Criminal Law Policy in Efforts to Combat Narcotics Crimes by Child Offenders, Diponegoro Law Journal Volume 5, Number 3, accessed on the Website: <http://www.ejournal-s1.undip.ac.id/index.php/dlr/>, p. 1

and child protection also concerns the younger generation. According to Dan O'Donnell, the term child protection means protection from violence, abuse and exploitation. This means that child protection is intended for the respect, protection and advancement of the rights of every child not to become a victim of a situation that is detrimental (endangering) to him. The right to protection complements other rights such as ensuring that children receive what they need to survive, grow and develop.¹²

PeSexual intercourse is included in criminal acts against morality, sexual intercourse occurs due to seduction which results in intimate relations between the opposite sexes.

Factors Inhibiting Legal Protection for Children as Victims of Sexual Intercourse:

1. Fathe victim himself

ToThe first obstacle is that the victim does not dare and is afraid to report the incident experienced by the victim. The victim factor itself is a determining factor that requires courage to reveal the crime of the perpetrator. Moreover, the victim received threats from the perpetrator. Moreover, the victim feels that this is a disgrace to the family, so it becomes an obstacle for the victim to be reported by the victim to the police. This is what hinders the provision of legal protection for victims to obtain justice.

2. Faperpetrator ctor

FaOne of the deviant sexual behavior factors is the form of criminal acts of sexual intercourse with children. This act does not only occur through elements of violence or threats of violence, but also through seduction carried out by the perpetrator so that the victim, in this case a child, follows the perpetrator's invitation to have sexual intercourse. The second obstacle is when the perpetrator of the crime of sexual intercourse with a child knows that he has been reported by the victim to the police. Perpetrators who have been reported will usually run away and hide in certain areas/cities before being arrested by investigators. In addition, the perpetrator takes advantage of the close relationship between the perpetrator and the victim when the relationship between the perpetrator and the victim is so close, the victim loses control or the ability to supervise to protect themselves, on the other hand the perpetrator is driven to have sexual intercourse with the child because there is an intention and opportunity for the perpetrator to have sexual intercourse with the victim as his child.

Yes the opinion above shows that sexual intercourse with children in the family can occur not only due to uncontrollable sexual urges and need to be vented by the perpetrator, but also due to emotional factors within the perpetrator. In addition, sexual intercourse also occurs because it is supported by the role of the perpetrator and the position of the victim. The role of the perpetrator is

¹²Nursariani Simatupang Faisal, 2018, Child Protection Law, Pustaka Prima, Medan

described as a human figure who fails to control his sexual instincts properly. The perpetrator takes advantage of the victim's carelessness, weakness, and mistakes directly or indirectly, his behavior has encouraged the perpetrator to do evil. The victim quickly believes the perpetrator's persuasion which causes the victim to become dependent on the perpetrator's existence

4. Conclusion

Based on the results of the research that the author has conducted, it can be concluded that the form of legal protection for child victims of sexual intercourse is the Provision of Restitution and Compensation Schafer stated that there are 3 (three) systems for providing restitution and compensation to victims of crime, namely: a. Compensation that is civil in nature, is given through a civil process. This system separates the victim's compensation claims from the criminal process. b. Compensation that is civil in nature is given through a criminal process. c. Restitution that is civil in nature and mixed with a criminal nature is given through a criminal process. Medical Services/Assistance is given to victims who suffer medically due to a criminal act. Legal assistance is a form of assistance to victims of crime. In Indonesia, this assistance is mostly provided by Non-Governmental Organizations (NGOs). Factors Inhibiting Legal Protection for Children as Victims of Sexual Intercourse include: Factors of the victim themselves and factors of the perpetrator. It is recommended that the police increase protection and supervision of children who are victims of violence.

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