

Legal Protection for Children as Victims of Criminal Sexual Violence

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Abstract. *The aim of this research is to determine and analyze the implementation of legal protection for child victims of sexual violence. To find out and analyze the obstacles faced by law enforcement officials regarding violence against child victims. To find out and analyze the ideal form of legal treatment in legal protection for child victims of sexual violence in the future to serve as a guide. The research method used in writing this journal is a normative juridical method which discusses doctrines or principles in legal science. The collection of legal materials was carried out using the literature study method in accordance with the approach used in this research, namely the statutory approach. The legal materials used are legal materials from scientific writings, legislation and other materials. Based on the results of the research, the implementation of legal protection for child victims of sexual violence is in accordance with physical, mental, spiritual and social needs as an effort to restore the condition of child victims of sexual violence who have long-term trauma . The obstacles faced are in the form of concealment of the victim, the victim does not report it because he is embarrassed that his shame will be known by others and there is blame on the part of the perpetrator of sexual violence. Meanwhile, the obstacles to preventive legal protection are the strong individualistic attitude of society and the lack of public understanding regarding sexual violence involving children. Efforts made to maximize the implementation of legal protection for child victims of violence include understanding parents and children about the dangers of sexual violence and strengthening massive and systematic commitment and cooperation from the authorities. The ideal form of legal handling in the legal protection of child victims of sexual violence in the future to be used as a guide is to refer to Law Number 12 of 2022 concerning Crimes of Sexual Violence. Article 68 explains that victims of sexual violence have the right to treatment.*

Keywords: Children; Crime; Protection; Sexual; Violence.

1. Introduction

A crime or criminal act can happen to anyone and can be committed by anyone, whether male, female, or child. Children are the next generation of the nation and the successor to development, namely the generation that is prepared as the subject of implementing sustainable development and the holder of control of the future of a country, including Indonesia. Protection of Indonesian children means protecting the potential of human resources and building the whole Indonesian people, towards a just and prosperous society, material and spiritual based on Pancasila and the 1945 Constitution.¹

Referring to the State's view, the State is committed to protecting all citizens, including children, as seen in the Opening of the 1945 Constitution, paragraph IV, which regulates human rights, and Article 28B (2) Child Protection. It is stated that children have the right to survive and also the right to receive protection from violence and discrimination.

Children are born into the world with freedom. This freedom is recognized by human rights therefore children's freedom is protected by the state and the law must not be eliminated or removed by anyone. Children remain children who are inherently independent, they need affection and protection of their rights from adults. Children in their growth and development need protection and attention from parents, society, and the state. Protection of children is the foundation for children to become adults to answer future challenges.

The acts of violence that occur in society are increasingly disturbing. In resolving a conflict or problem that is accompanied by acts of violence.² In general, violence can be defined as the intentional use of physical force or violence, actual or threatened violence against oneself, another person, or a group or community, resulting in or likely to cause injury, death, psychological harm, or development of disorders or harm. There are many forms of violence, including physical violence, verbal violence, psychological violence, economic violence, symbolic violence and neglect.³

One of the crimes that has become a recent phenomenon is sexual violence against children. Children are a priceless gift bestowed by God on every

¹Nashriana, 2011, Criminal Legal Protection for Children in Indonesia, Rajawali Pers, Jakarta, p. 1.

²Afandi and Umar Ma'ruf, 2021, The Criminal Sanctions Implementation of Personnel Sexual Violence on Under Age's Children (Minors), in Journal of Daulat Hukum Volume 4 (1), Published Master of Law, Faculty of Law Unissula, p. 50, <http://jurnal.unissula.ac.id/index.php/RH/article/view/13886/5384>

³Aan Hardiansyah, Akhmad Khisni, Jawade Hafidz, Violence in the Teaching and Learning Process Viewed from the Perspective of Criminal Law and Law No. 14 of 2005 on Teachers and Lecturers, Journal of Legal Sovereignty Vol. 1.No. March 1, 2018 ISSN: 2614-560X, Unissula

human couple to be cared for, protected, and educated. They are humans who have physical, mental, and social abilities that are still limited to overcome the various risks and dangers they face and automatically, still depend on other parties, especially family members who play an active role in protecting and caring for them. Protection of the life and livelihood of children is still the responsibility of various parties, namely their parents, their families, the community, and also the state. This protection can be in the form of clothing, food, and shelter. Not only that, the protection given to a child can also be in the form of protection against the psychological or mental condition of the child, especially their mental development. This means that the child can develop and live normally, not only in terms of physical development but also in terms of mental or psychological development. Furthermore, protection against the form of protection is legal protection against victims of criminal acts, which can be interpreted as protection to obtain legal guarantees for the suffering or loss of the party who has become a victim of a criminal act.

The research objectives that will be taken in the research plan in question are as follows: To find out and analyze implementation of legal protection for child victims of sexual violence. To know and analyze obstacles faced by law enforcement officers in dealing with violence against child victims. To know and analyze the ideal form of legal treatment in legal protection for child victims of sexual violence in the future to be used as a guideline.

2. Research methods

The research method used in writing this journal is the normative legal method which discusses doctrines or principles in legal science.⁴ The collection of legal materials was carried out using the literature study method in accordance with the approach used in this study, namely the legislative approach. The legal materials used are legal materials in the form of scientific papers, legislation, and other materials related to the protection of victims of sexual violence.

3. Results and Discussion

3.1. Implementation of Legal Protection for Child Victims of Sexual Violence

Indonesia has established Law Number 23 of 2002 concerning Child Protection as a form of serious attention from the government in protecting children's rights. Law Number 23 of 2002 concerning Child Protection has determined the existence of protection against reporting the identity of children as victims of crime. Deviations or violations of children's rights often occur. This is proven by the many cases of crime on television or newspapers that do not protect the identity of children as victims of crime.

⁴ Zainuddin Ali, 2011, *Legal Research Methods*, Sinar Grafika, Jakarta, p. 24

Legal protection for child victims of rape in mass media reporting According to Law Number 23 of 2002 concerning Child Protection As stated in Article 1 number (2) General Provisions of Law Number 23 of 2002 concerning Child Protection, 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.

The purpose of child protection according to the law is to ensure that children's rights are fulfilled so that they can live, grow and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination, in order to realize Indonesian children who are qualified, have noble morals and are prosperous.

PeChild protection is regulated by various laws and regulations, but it is also the responsibility of society, individuals, government and the state under the law. Various deviant behaviors that exist today also occur as a result of social changes in society and various developments in the dynamics of law enforcement. It is important to present a clear concept of justice when dealing with the problem of child victims of crime, so that this justice provides what is the right of every person. One of the objectives of law is the fulfillment of justice, which is also related to the objectives of law, namely legal certainty, benefit and legal justice.

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 one of the efforts to implement the formulation. Criminal policies or efforts to overcome crime are essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare (social welfare). Therefore, it can be said that the ultimate goal or main goal of criminal policy is to protect society to achieve social welfare.

Pechild protection is carried out based on the principles of non-discrimination, the best interests of the child, respect for the child's opinion, the right to live, grow and develop and the right to participate. It regulates the basic rights of children to obtain identity, freedom, health services, entertainment, and education. In its implementation, the Law has been in line with the mandate of the 1945 Constitution of the Republic of Indonesia regarding the guarantee of human rights, namely that children as humans have the same rights to grow and develop.

Woweven though legal instruments have been owned, in its journey Law Number 23 of 2002 concerning Child Protection has not been able to run effectively because there is still overlap between sectoral laws and regulations related to the definition of children. On the other hand, the

rampant crimes against children in society, one of which is sexual crimes, which requires increased commitment from the Government, Regional Government and Community as well as all stakeholders related to the implementation of Child Protection.

Legal certainty needs to be attempted for the sake of the continuity of child protection activities and preventing abuses that bring undesirable negative consequences in the implementation of child protection activities. For that, child protection activities have at least two aspects. The first aspect relates to policies and laws and regulations governing the protection of children's rights. The second aspect concerns the implementation of these policies and regulations.⁵

Implementation of legal protection for child victims of sexual violence already in accordance with physical, mental, spiritual, and social needs as an effort to restore the condition of child victims of sexual violence who have long-term trauma. The government should pay attention to the situation and conditions of the times that continue to change and the mode of a sexual crime against children is increasingly diverse, and a legal renewal/breakthrough is needed to improve the means and facilities that support legal protection for child victims of sexual abuse.

3.2. Obstacles Faced by Law Enforcement Officers in Dealing with Violence Against Child Victims

The accountability of the state regarding the welfare of its citizens is a basic principle related to the formation of a state that has a goal to be able to provide guarantees for welfare. This can be easily interpreted as a state that provides welfare or peace for its citizens with a democratic form of government which places the state as an institution that is responsible for providing guarantees regarding the law in order to create welfare for the people. Where this can be achieved through various public provisions regarding economic factors as well as social factors in order to achieve welfare and social justice. In an effort to provide legal assistance, the role of the government in order to create welfare in the country in general, there needs to be a mechanism that can provide control or provide regulations to provide limitations on government actions so that they do not expand from the scope of the goals achieved by the state in a provision. The existence of principles related to welfare in the country itself is better understood as an impact on the source of individual welfare of citizens as part of social capital.⁶

Legal protection for children is an effort to provide freedom of children's basic rights (fundamental rights and freedom of children), as well as

⁵Arief Gosita, 1993, Problems of Crime Victims, Akademika Pressindo, Jakarta, p. 222

⁶Belli Jenawi, 2017, "Legal Study on Obstacles in Legal Protection by Law Enforcement Officers for Child Victims of Sexual Abuse (Reviewed from Law No. 35 of 2014)," Lex Crimen, 6.8

interests related to children's welfare. Providing protection for children both spiritually and physically is an obligation, because it is a right owned by children so that they do not become victims of a crime. Regarding the protection of children who are victims of sexual violence, serious attention is needed from the parties involved in order to provide treatment for children who are victims of sexual violence. However, the parties in their efforts to provide education and legal assistance sometimes encounter obstacles.

Fact These factors are the trauma for child victims of rape where the trauma affects the victim so that they seem to be silent and even hysterical if the parties providing assistance ask about the chronology of the incident experienced by the child. This also requires patience and also insight in order to obtain information so that a solution can be found immediately that can be taken from the incident. In addition, other inhibiting factors are that the party providing assistance has difficulty meeting with victims of sexual violence because the location of the victim of this crime is far away and also access to the place or location of the victim is difficult to reach by vehicle.⁷

The obstacles that may arise in relation to the provision of protection in relation to enforcing the law in cases of sexual violence crimes can also originate from the victim. This means that the victim himself/herself wants not to be protected by law enforcers so that the victim's own rights cannot be implemented. For example, regarding the victim's personal safety 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 a safe house that has been provided. This itself can occur due to a lack of trust in law enforcers themselves.

Another obstacle that often arises is an obstacle that originates from law enforcement officers. This obstacle can be in the form of an individual from an investigator who often carries out a deviation which in this case is related to the interests of the rights of the victim of the crime. It is possible that this deviation can also cause a consequence, namely regarding a bad mentality where this is demonstrated by individuals from the police as law enforcement themselves. because there are several victims of domestic violence who have to give a certain amount of money in order to get protection from the police and the large number of children who are victims of rape who must receive special treatment, especially protection. The difference in numbers is often an obstacle in all matters, including in the implementation of the rights of victims, along with the increase in criminal acts, the more victims of crime appear, making it difficult for the police to handle them.

⁷Hamka Pradana and Sulung Najmawati, 2023, "Effectiveness of the Role of DP2PA in Providing Protection for Child Victims of Sexual Violence," *Mitsaq: Islamic Family Law Journal*, 1.1, pp. 57–70

Obstacles Faced by Law Enforcement Officers Against Violence Against Child Victims, namely in repressive legal protection, the obstacles faced are in the form of victims being closed, victims not reporting because they are ashamed of their shame being known by others and the existence of thuggery from the perpetrators of sexual violence. While the obstacles to preventive legal protection are in the form of strong individualistic attitudes of society and minimal public understanding regarding sexual violence involving children. Efforts made to maximize the implementation of legal protection for child victims of violence are to provide understanding to parents and children regarding the dangers of sexual violence and strengthening commitment and massive and systematic cooperation from the authorities.

3.3. The Ideal Form of Legal Handling in Legal Protection for Child Victims of Sexual Violence in the Future to be Used as a Guideline

The Criminal Code (KUHP) actually regulates provisions regarding criminal sanctions against perpetrators of sexual violence, 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).⁸

Investigation is the most important part of the Criminal Procedure Code, which in its implementation often has to touch on the dignity and honor of individuals, which is sometimes considered mandatory. An important motto in the Criminal Procedure Code is that the nature of criminal investigation is to clarify things and at the same time prevent innocent people from taking action that must be charged to them. Therefore, the investigation process carried out by investigators often takes a long time, is tiring and can also cause psychological disorders, trying to stop the investigation.⁹

⁸M. 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

⁹Rudiana and Bambang Tri Bawono, 2022, The Investigation Process of Drug Criminal Actions by Police Investigators, Ratio Legis Journal, Volume 1 Number 2, Unissula, p. 147

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, and child protection also concerns the younger generation.¹⁰

Criminal acts of sexual violence cannot be solved only by knowing the forms of sexual violence. It would be incomplete if we did not know other instruments contained in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence as a legal umbrella for handling sexual violence.

Until now, public knowledge of the rights of victims of sexual violence in Indonesia is still very minimal. Not infrequently, victims of sexual violence do not know that they have become victims, and do not even realize that their rights have been taken away. Therefore, knowledge of the rights of victims of sexual violence is important in efforts to build an environment that is safe from sexual violence.

The theory of legal culture explains that law is basically not just a black and white formulation as stated in various forms of legislation, but law should be seen as a phenomenon that can be observed in the life of society through the behavioral patterns of its citizens.¹¹ 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 necessary to consider the best interests of the child, namely that all decision-making must always consider the survival and development of the child.¹²

The ideal form of legal handling in legal protection for child victims of sexual violence in the future to be used as a guideline is to refer to Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Article 68 explains that victims of sexual violence have the right to handling, including the right to information on the entire process and results of Handling, Protection, and Recovery. The right to obtain documents of the results of Handling. The right to legal services. The right to psychological strengthening. The right to health services including examination, action, and medical care. In addition, victims have the right to services and facilities according to the special needs of the Victim and the right to the removal of sexually charged content for cases of sexual violence with electronic media.

¹⁰Nursariani Simatupang & Faisal, 2018, Child Protection Law, Pustaka Prima, Medan, p. 24

¹¹Ishaq, 2008, Basics of Legal Science, Sinar Grafika, Jakarta, p. 10

¹²Kismanto, Anis Mashdurohatun, 2017, Legal Justice for Children Victims of Criminal Sexual Violence in Kendal Regency, Khaira Ummah Law Journal Vol. 12.No. 1

4. Conclusion

Based on the results and discussions that have been presented, the following conclusions can be formulated regarding the implementation of legal protection for child victims of sexual violence. It is in accordance with physical, mental, spiritual, and social needs as an effort to restore the condition of child victims of sexual violence who have long-term trauma. The government should pay attention to the situation and conditions of the times that continue to change and the mode of a sexual crime against children is increasingly diverse, and a legal renewal/breakthrough is needed to improve the means and facilities that support legal protection for child victims of sexual abuse. Preventive legal protection, the obstacles faced are in the form of the victim's cover-up, the victim does not report because he is ashamed of his shame being known by others and the existence of thuggery from the perpetrators of sexual violence. While the obstacles to preventive legal protection are in the form of a strong individualistic attitude of society and a lack of public understanding regarding sexual violence involving children. Efforts made to maximize the implementation of legal protection for child victims of violence include providing understanding to parents and children regarding the dangers of sexual violence and strengthening commitment and massive and systematic cooperation from the authorities. The ideal form of legal handling in legal protection for child victims of sexual violence in the future to be used as a guideline is to refer to Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. in Article 68.

The suggestions that can be given are as follows to law enforcement officers and related authorized agencies to further socialize the importance of legal protection for children along with the impact of sexual violence against children as a preventive effort so that public understanding and legal awareness can grow and not commit acts of violence against children.

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