

Legal Protection Fulfillment of the Rights of Child Victims of Sexual Violence

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ABSTRACT

Children are part of the younger generation as one of the human resources who are the potential and successors of the nation's struggle ideals. Based on data from the Ministry of PPPA, there were also 8,478 cases of violence against women in 2021, of which 15 percent or 1,272 cases were cases of sexual violence. The problem of sexual violence in children is very concerning because of the tremendous negative impact experienced by children after the incident even after many years of the incident have passed. The recovery of child victims of sexual crimes is a complex issue in the psychological recovery of child victims. But unfortunately, the law in Indonesia is still only focused on how to provide punishment for perpetrators, but has not paid attention to how the physical and psychological condition of the victim. Therefore, it is necessary to formulate preventive (preventive) and curative (healing) measures carried out by all parties to be able to fulfill the rights of victims, especially physical and psychological trauma assistance. The purpose of this study is to determine how preventive and curative steps to assist physical and psychological trauma as a form of fulfilling the rights of child victims of sexual violence. The research method used is normative juridical, which is a type of legal research that uses research materials in the form of theories, concepts, legal principles, and legal regulations that concern the subject of research or in other words normative juridical research is research that uses sources from literature or secondary data. The results of this study are how preventive and curative efforts to assist physical and psychological trauma as a form of fulfilling the rights of children victims of sexual violence are appropriate and who can contribute to these efforts.

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I. INTRODUCTION

Children are part of the younger generation as one of the human resources who are the potential and successors of the ideals of the nation's struggle who have a strategic role and have special characteristics and characteristics that require protective guidance in order to ensure physical, mental, social growth and development in a complete, harmonious, harmonious and balanced manner. Childhood is a time when children are in the process of growth and development. Therefore, children must be protected from all possible violence and abuse against children, especially sexual abuse because every child has the right to protection.

Crime according to R. Soesilo is divided into two points of view, namely juridical and sociological crime. In a juridical point of view, it is explained that crime is a behavior that is contrary to the law, while in a sociological point of view, crime is an act or behavior that is not only detrimental to the sufferer (victim) but also very detrimental to society in the form of loss of balance, peace and order.¹

Reporting from national.kompas.com, based on data from the Ministry of PPPA, there were also 8,478 cases of violence against women in 2021, of which 15 percent or 1,272 cases were cases of sexual violence. Meanwhile, the Women's Life Experience Survey organized by the Ministry of PPPA in 2021 also showed an increase in the prevalence of cases of sexual violence against women aged 15-64 years committed by other than spouses.

Meanwhile, the Child and Adolescent Life Experience Survey found that 4 out of 100 males aged 13-17 years and 8 out of 100 females aged 13-17 years in urban areas have experienced sexual violence. Meanwhile, 3 out of 100 men aged 13-17 years and 8 out of 100 women aged 13-17 years have experienced sexual violence in their lifetime. However, Bintang assessed that the data is an iceberg phenomenon because many cases are not reported.²

The data above is just the tip of the iceberg. Many cases are not reported for various reasons, not to mention cases of sexual harassment such as groping, kissing, or showing erotic scenes that are rarely considered cases that should be reported or followed up to the authorities.

The issue of child sexual abuse is of great concern because of the tremendous negative impact that children experience after the incident and even years after the incident has passed. The memory of the sexual violence experienced will often not be erased with the passage of time. Child sexual brutality is currently a concern and must be followed up immediately with the aim that the fate of young people is protected and supervised by the state.

The recovery of child victims of sexual crimes is a complex issue in the psychological recovery of child victims. Seto Mulyadi even considered that cases of sexual violence against children are ten times more cruel than against adults. The reason is that children are still vulnerable, weak, easily seduced, and fooled. In addition, sexual violence and harassment are not just physical acts such as rape, touching certain parts, or forcibly kissing. These acts also attack the child's psychology and personality. Children can become apathetic, low self-esteem, easily give up, and have a negative self-concept such as feeling like the most despicable person, or feeling that they were born to live a life of suffering.

Conversely, sexual violence experienced by children can also make children imitate the violence they receive. So, the child thinks that life must be violent so that in the future the child also commits similar sexual violence against children who are younger. Even worse, cases of child sexual abuse often make children have premature sexual behavior, have sexual relations with anyone (promiscuity), engage in drug abuse, and have suicidal ideas which ultimately lead to suicidal behavior (Nevid et al., 2005).

Indonesian law is still only focused on how to punish the perpetrators, but has not paid attention to the physical and psychological conditions of victims. Therefore, it is necessary to formulate preventive and curative measures taken by all parties to fulfill the rights of victims, especially physical and psychological trauma assistance. Based on the background that has been described, the author is interested in examining how legal protection and efforts must be made to fulfill the rights of child victims of sexual violence, which we pour in a thesis entitled "LEGAL PROTECTION OF THE FULFILLMENT OF THE RIGHTS OF CHILDREN VICTIMS OF SEXUAL VIOLENCE".

II. RESEARCH PROBLEMS

Based on the background of the problems described above, the problems to be discussed are as follows:

1. How is legal protection for minors who experience sexual violence?
2. How should efforts be made to achieve the fulfillment of rights for minors who experience sexual violence?

III. RESEARCH METHODS

The research that the author will use in this research is a type of normative juridical research or using normative legal research methods. Normative juridical research is a type of legal research that uses research

¹ R. Soesilo, "*Kitab Undang-Undang Hukum Pidana (KUHP) serta komentar-komentarnya lengkap pasal demi pasal untuk para pejabat kepolisian negara, kejaksaan/pengadilan negeri, pamong praja dsb*", (Bogor: Penerbit Politeia, 1985).

² <https://nasional.kompas.com/read/2022/03/24/15034051/kementerian-pppa-11952-kasus-kekerasan-terhadap-anak-terjadi-sepanjang-2021>

materials in the form of theories, concepts, legal principles, and legal regulations concerning the subject of research or in other words normative juridical research is research that uses sources from literature or secondary data.³

IV. RESULT AND DISCUSSION

1. Legal Protection for Minors Who Experience Sexual Violence

Article 1 paragraph (1) of Law of the Republic of Indonesia No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning Child Protection outlines that "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb". This shows that children are the next generation of the nation who need special legal protection for physical and mental reasons that are not mature and mature. Children's rights are included in human rights that must be upheld in Indonesia (Sommaliagustina & Sari, 2018). Legal protection for child victims of sexual violence aims to realize children's human rights. Legal protection of children is an effort to provide freedom of fundamental rights and freedom of children, as well as interests related to child welfare (Yusyanti, 2020). The legal protection of child victims of sexual violence that has been mandated in the law is not only the responsibility of one party. Legal protection of children is the responsibility of all parties without exception.

According to Lyness (Maslihah, 2006) sexual violence against children includes touching or kissing a child's sexual organs, sexual acts or rape against children, showing pornographic media/objects, showing genitals to children and so on. Sexual abuse is a type of abuse that is usually divided into two categories based on the identity of the perpetrator, namely:

a. Familial Abuse

Familial abuse includes incest, which is sexual violence where the victim and perpetrator are still related by blood, being part of the nuclear family. This includes someone who is a substitute for a parent, such as a stepfather, or a lover, nanny or person entrusted with the care of a child. Mayer (Tower, 2002) lists the categories of incest in the family and links them to child abuse, namely the first category, sexual molestation, which includes noncoital interactions, petting, fondling, exhibitionism, and voyeurism, all related to sexually stimulating the perpetrator. The second category, sexual assault, includes oral or genital intercourse, masturbation, oral stimulation of the penis (fellatio), and oral stimulation of the clitoris (cunnilingus). The last and most fatal category is called forcible rape, which includes sexual contact. Fear, violence and threats are difficult for the victim. Mayer said that at most the last two categories are the most traumatizing for children, but previous victims did not say so.

b. Extra Familial Abuse

Sexual abuse is violence perpetrated by someone other than the victim's family. In the pattern of sexual abuse outside the family, the perpetrator is usually an adult who is known to the child and has built a relationship with the child, then lures the child into a situation where the sexual abuse is committed, often by providing certain rewards that the child does not get at home. The child usually remains silent because they are afraid of incurring the wrath of their parents. In addition, some parents are less concerned about where and with whom their children spend their time. Children who frequently skip school are prone to this and should be watched out for.

Sexual violence with children as victims committed by adults is known as pedophilia, and the main victims are children. Pedophilia can be defined as "liking children" (de Yong in Tower, 2002).

According to Adrianus E. Meliala, there are several categories of pedophilia, namely those who are attracted to children under 5 years old are called infantophilia. Meanwhile, those who are attracted to girls aged 13-16 are called hebophilia, those who are attracted to boys at that age are known as ephebohiles. Based on behavior, there is exhibitionism, which is for those who like to show off, like to strip the child; or called voyeurism, which likes to masturbate in front of the child, or just squeeze the child's genitals.

Pedophilia can be due to a disorder, meaning that this person (the perpetrator) may have experienced the same trauma, resulting in deviant behavior, it can also be due to lifestyle, such as the habit of watching pornography, thus forming a desire for sexual intercourse.⁴

Article 28 B paragraph (2) of the 1945 Constitution, that the State guarantees every child the right to survival, growth and development and the right to protection from violence and discrimination. Therefore, we all

³ Soerjono Soekanto dan Sri Mahmudji. 2003. "Penelitian Hukum Normatif Suatu Tinjauan Singkat". Jakarta: Raja Grafindo Persada. hlm. 13

⁴ Ivo Noviana. (2015). "KEKERASAN SEKSUAL TERHADAP ANAK: DAMPAK DAN PENANGANANNYA CHILD SEXUAL ABUSE: IMPACT AND HENDLING". Pusat Penelitian dan Pengembangan Kesejahteraan Sosial, Kementerian Sosial RI.

always try not to let children become victims of violence, or children fall into committing bad acts or other disgraceful acts.

Based on the provisions in Article 7A paragraph (1) of Law Number 31/2014 on Witness and Victim Protection, victims of criminal acts are entitled to restitution which can be in the form of compensation for loss of income or wealth; compensation for losses arising from suffering that is a direct result of a criminal offense and / or reimbursement of medical and / or psychological treatment costs.

Perpetrators who commit sexual violence against children are called pedophiles. Sexual violence against children according to Weber and Smith has a long-term psychological impact. Seeing the impact of sexual violence, the state seeks to provide legal protection for children from preventive sexual crimes. This is done by the promulgation of several laws and regulations such as Law Number 23 of 2002 concerning Child Protection as amended and improved by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law 17 of 2016 concerning the Stipulation of Perpu 1 of 2016 concerning the Second Amendment to Law 23 of 2002 concerning Child Protection into Law, and Government Regulation Number 59 of 2019 concerning the Implementation of Child Protection Coordination.

Repressive efforts in the form of imposing sanctions on perpetrators of sexual violence against children can be seen in the provisions of Articles 81, 81A, 82, and 82A of Law Number 23 of 2002 concerning Child Protection in conjunction with Law 17 of 2016 concerning the Stipulation of Perpu 1 of 2016 concerning the Second Amendment to Law 23 of 2002 concerning Child Protection into Law.

Handling sexual violence against children requires synergy between family, community and the state. Sexual violence against children, in handling cases of sexual violence against children should be holistic and integrated. All sides need improvement and handling, both from the medical side, the individual side, the legal aspect (in this case there are still many weaknesses), and social support.

1) The Role of Parents

Parents (non-abusers) are very helpful in the adjustment and recovery process of the child after the sexual violence event. In the aftermath of sexual violence, parents need the opportunity to work through their feelings about what happened and adjust to the major changes that have occurred. In addition, parents need to regain confidence and a sense of control over the situation. The recovery process of parents is closely related to the resilience of the parents as individuals and the resilience of the family.

2) Community Role

The handling of sexual violence against children requires community participation, by paying attention to prevention aspects that involve citizens and also involve children, which aims to provide protection to children at the grassroots level. The involvement of children is needed as one of the references to detect cases of violence that they experience. At a minimum, children are taught to recognize, reject and report potential threats of violence.

3) Role of the State

The state has "allowed" the emergence of sexual violence around children, therefore, the role of the state is certainly the greatest in handling sexual violence against children. This is because, in essence, the state has the ability to shape the readiness of individuals, families and communities. The state, in this case the government, is fully responsible for the welfare of its people.

4) System-based Approach

Given the treatment of children as victims of sexual violence, the approach to child protection that needs to be taken must be system-based. A systems-based child protection approach aims to strengthen the environment that protects children from any harm. A systems-based child protection approach emphasizes the responsibility or obligation of the state as the primary duty bearer in providing services for the fulfillment of children's rights and child protection. The state recognizes children as rights holders and entitled to protection and it is the state's responsibility for children's welfare.

2. Efforts to Fulfill the Rights of Minors Experiencing Sexual Violence

Criminal offenses and sanctions for violence committed against children according to Law No. 35 of 2014 on Child Protection. Law No. 35 of 2014 on Child Protection provides legal protection for children's rights, especially for child victims of criminal acts of violence.

Rights of Victims of Sexual Violence

The Sexual Violence Crime Law provides rights to victims, families of victims, witnesses that are granted by the state. These rights are listed in Articles 66 to 71 of the Sexual Violence Crime Law.

1. Handling Rights

Handling rights are rights that are owned for actions taken to provide complaints, health, social rehabilitation, law enforcement, legal services, repatriation, and social reintegration services. Handling rights include:

- i. The right to information on the entire process and results of Handling, Protection, and Recovery;
- ii. The right to obtain documents on the results of handling;
- iii. The right to legal services;
- iv. The right to psychological strengthening;
- v. The right to health services including medical examination, treatment, and care;
- vi. The right to services and facilities in accordance with the special needs of the Victim; and
- vii. The right to the removal of sexually charged content for cases of sexual violence with electronic media.

2. Protection Rights

Protection is an effort to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or Victims which must be implemented by the Witness and Victim Protection Agency or other institutions in accordance with statutory provisions. The right to protection in the Sexual Violence Crime Law includes:

- i. Provision of information regarding Protection rights and facilities;
- ii. Provision of access to information on the implementation of Protection;
- iii. Protection from threats or violence from perpetrators and other parties and the recurrence of violence;
- iv. Protection of identity confidentiality;
- v. Protection from the attitude and behavior of law enforcement officials who demean the Victim;
- vi. Protection from loss of employment, job transfer, education, or political access; and
- vii. Protection of the Victim and/or whistleblower from criminal charges or civil lawsuits for Sexual Violence Crimes that have been reported.

3. Right to Recovery

Recovery is all efforts to restore the physical, mental, spiritual and social condition of the victim. The right to recovery in the Sexual Violence Crime Law includes:

- i. Medical rehabilitation;
- ii. Mental and social rehabilitation;
- iii. Social empowerment;
- iv. Restitution and/or compensation; and
- v. Social reintegration.

In addition, victims with disabilities are also entitled to accessibility and reasonable accommodation for the fulfillment of their rights in accordance with the provisions of laws and regulations unless otherwise specified.

Rights of Victims' Families

According to Article 71 of the Sexual Violence Crime Law, the victim's family has rights from the state. The rights of the victim's family in the Sexual Violence Crime Law include:

- i. The right to information about Victims' Rights, Victims' Family rights, and the criminal justice process from the start of reporting until the completion of the criminal period served by the convict;
- ii. The right to confidentiality of identity;
- iii. The right to personal security and freedom from threats related to the testimony that will be, is, or has been given;
- iv. The right not to be criminally prosecuted and not to be civilly sued for reports of sexual violence;
- v. The right to custody of the Child Victim, unless the right is revoked through a court decision;

- vi. The right to receive psychological strengthening;
- vii. The right to economic empowerment; and
- viii. The right to obtain civil registration documents and other supporting documents required by the Victim's Family.

V. CONCLUSION

Children are part of the younger generation as one of the human resources who are the potential and successors of the ideals of the nation's struggle who have a strategic role and have special characteristics and characteristics that require protective guidance in order to ensure physical, mental, social growth and development in a complete, harmonious, harmonious and balanced manner.

Repressive efforts in the form of imposing sanctions on perpetrators of sexual violence against children can be seen in the provisions of Articles 81, 81A, 82, and 82A of Law Number 23 of 2002 concerning Child Protection in conjunction with Law 17 of 2016 concerning the Stipulation of Perpu 1 of 2016 concerning the Second Amendment to Law 23 of 2002 concerning Child Protection into Law.

Handling sexual violence against children requires synergy between family, community and the state. Sexual violence against children, in handling cases of sexual violence against children should be holistic and integrated. All sides need improvement and handling, both from the medical side, the individual side, the legal aspect (in this case there are still many weaknesses), and social support.

Crimes and Sanctions for Violence committed against children according to Law No. 35 of 2014 concerning Child Protection. Law No. 35 of 2014 on Child Protection provides legal protection for children's rights, especially for child victims of criminal acts of violence, both the Rights of Victims of Sexual Violence and the Rights of Victims' Families.

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