

Criminal Policy for Legal Protection of Children Victims of Criminal Action of Sexual Violence in the Household

Syaiful Asmi Hasibuan

Universitas Pembangunan Panca Budi, Medan, Indonesia

syaiful_asmi@dosen.pancabudi.ac.id

Abstract

This study is aimed to determine the criminal policy for legal protection of children victims of criminal action of sexual violence in the household. The type of research used is normative legal research which is carried out by examining library research using secondary data sources, both in the form of primary legal materials and secondary legal materials as well as tertiary legal materials. This study conclude that A criminal act is an act that results in a long-term negative impact on the victim, both physically and psychologically. Referring to the provisions in Article 10 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, legal protection that allows victims of a crime to be obtained, including: a. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the stipulation of a protection order from the court; b. Health services according to medical needs; c. Handling specifically related to the confidentiality of the victim; d. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation; and e. Spiritual guidance services.

Keywords

criminal policy; legal protection; children victims; sexual violence



I. Introduction

One of the objectives the establishment of the Republic of Indonesia is to protect the entire Indonesian nation. So that to implement this goal, the state is obliged to provide protection to all Indonesian citizens, especially children and vulnerable groups or victims of a crime. Victims as parties who are harmed by a criminal act are often neglected and even do not receive attention, especially with increasing attention to the development of prisoners which is often interpreted as something that is not related to fulfilling the interests of victims, it is not surprising that attention to victims is getting further from the word protection.

Protection of victims of a crime is very important to pay attention to and prioritized to get protection because the suffering of victims due to a crime cannot be said to be finished or ends with the punishment of the perpetrator of the crime or the perpetrator of the crime has finished serving the sentence given to him as a reward from the deed he did. Moreover, if we study further about the law on the elimination of domestic violence, if the perpetrator is proven to have committed a criminal act of sexual violence against children and then the perpetrator (parents) is sentenced to prison to account for his actions, then who else will provide a living for the victim (children)? If the perpetrator is subject to a fine, then the state will take payment for the fine.

Victims of criminal acts can experience a second time as victims, namely physical victims as well as material victims due to the criminal justice process. Meanwhile, the purpose of punishment must provide benefits to many people, not only for certain people

or perpetrators (Chairul Huda, 2008: 133), but also the law must be able to guarantee the true happiness of the majority of society (the greatest happiness of the great number).). According to Article 27 paragraph 1 of the 1945 Constitution of the Republic of Indonesia, it is stated that all citizens are equal before the law, which is in line with the principle of equality before the law which is an important principle in a state of law towards respect and basic commitment from the principle of balance for all citizens. state, either a perpetrator or a victim of a crime. (Bambang Waluyo, 2014: 1)

In the current era of globalization, the development of criminal acts has spawned new types of crime, transnational crime, one of which is corruption, money laundering, terrorism, human smuggling, human trafficking, and cyber crime. This is very interesting to the attention of the international community (Kartika. 2020: 948).

Humanity and justice, as the core values of the state philosophy (Pancasila) animate the entire existence of law in Indonesia, starting from the 1945 Constitution of the Republic of Indonesia to the laws and regulations below. The criminal justice system, through the products of laws and regulations in Indonesia, does not really include the protection of victims of criminal acts in particular. There are many legal theories that discuss the protection of perpetrators, the rights of a suspect, defendant and convict so as to make the perpetrators of criminal acts more protected and on the contrary, the victims are increasingly neglected.

The above description shows that criminal law should be reviewed and must look at broader interests, not only focusing on retaliation for criminal acts, but also the interests of victims of criminal acts should be considered. Based on the description of the background above, it is interesting for researchers to raise the topic of research on the Legal Protection of Child Victims of Sexual Violence in the Household (Case Study in North Sumatra).

Based on this background and rationale, problems arise that become the subject of this research, namely How is the criminal law policy in the context of legal protection for children who are victims of domestic sexual violence?

II. Research Methods

The type of research used is normative legal research which is carried out by examining library research using secondary data sources, both in the form of primary legal materials and secondary legal materials as well as tertiary legal materials (Ediwarman, 2015: 25-27). This research is prescriptive analysis (Peter Mahmud Marzuki, 2010: 22), which means that this research does not only describe by analyzing a situation or symptom, both on the plains of positive and empirical law but also this research provides the proper arrangements and solves legal problems. To be able to provide an assessment of this research, the data collected using qualitative analysis methods is utilized (Milles and Hubberman, 1992: 15-20). Qualitatively analyzed data will be presented in the form of a systematic description by explaining the relationship between various types of data, then all data are selected and processed and then analyzed descriptively so that several things can be drawn that can be concluded in this study. (Shown Ansari Siregar, 2005: 103)

III. Results and Discussion

Sexual violence is a sexually oriented act that results in physical or psychological harm or suffering to children, including threats of such acts in the form of coercion or arbitrary deprivation of liberty. Meanwhile, victims who are under threat, violence, or powerless so that they cannot deny what is happening, do not understand (Marcheyla Sumera, 2013: 46). A criminal act is an act that results in a long-term negative impact on the victim, both physically and psychologically (Pramudya A. Oktavinanda, 2012: 27). Referring to the provisions in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, legal protection that allows victims of a crime to be obtained, including:

a. Protection Rights of All Parties

Article 10 of Law no. 23 of 2004 "Victims are entitled to:

1. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the stipulation of a protection order from the court;
2. Health services according to medical needs;
3. Handling specifically related to the confidentiality of the victim;
4. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation; and
5. Spiritual guidance service".

The law on the elimination of domestic violence as well as in the explanation of this law does not provide an explicit definition of protection, this law only provides the purpose of the protection that will be provided, as it reads:

Article 1 number 4 of Law no. 23 of 2004:

"Protection is all efforts aimed at providing a sense of security to victims carried out by the family, advocate, social institutions, police, prosecutors, courts, or other parties, either temporarily or based on court decisions".

Protection literally comes from the word which means placing oneself under (behind, behind) something so that it is not seen or not hit. While protection is a place of refuge or something related to protecting. When examined, protection is an effort to maintain or protect and guarantee the achievement of interests and rights, in this case the interests and rights of children who are victims of criminal acts.

Child protection is an effort made to create a situation where children can carry out their obligations and can take advantage of what they are entitled to so that children can grow and develop properly both physically, mentally and socially. Child protection is a manifestation of the enforcement of justice in the midst of society, thus child protection is sought in various fields of national and state life. The law is a guarantee of the protection process for children.

Arif Gosita argues that legal certainty must be sought for the continuity of child protection activities and prevent the emergence of bad and unwanted impacts from the implementation of child protection (Maidin Gultom, 2014: 40). The implementation of protection for children is based on Pancasila and is based on the 1945 Constitution of the Republic of Indonesia as well as the basic principles of the Convention on the Rights of the Child, including: not discriminating, providing the best interests of the child, the right to life, survival and development, and respect for children's opinions. (Article 2, Law No. 35/2014)

Policies for the protection of the public interest are an integral part of efforts to improve social welfare which cannot be separated from the state's goals, namely to protect the entire Indonesian nation and to promote general welfare, or in other words that policies on legal protection are essentially an integral part of policies to protect society as a whole, namely in the context of achieving social welfare.

Therefore, it provides legal protection to individuals as well as implies providing protection to the community. The provision of legal protection in addition to protecting the rights of each individual, the most basic of which is to achieve the goals of the state as described in the Preamble to the 1945 Constitution of the Republic of Indonesia, to promote the general welfare.

b. Health Service Rights

Article 10 of Law no. 23 of 2004 "Victims are entitled to:

1. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the stipulation of a protection order from the court;
2. Health services according to medical needs;
3. Handling specifically related to the confidentiality of the victim;
4. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation; and
5. Spiritual guidance service".

Health is an important thing for humans. Every human being wants health for himself, his family, and his loved ones. And all humans have the right to health services. Article 28 H paragraph 1 of the 1945 Constitution states:

"Everyone has the right to obtain health services. So everyone has the right to get health services, even if it's from the poor or those who can afford it".

Health is one of the elements of general welfare, it must be realized through various health efforts in a comprehensive and integrated health development series that is supported by a national health system. Article 34 paragraph 3 of the 1945 Constitution states:

"The state is responsible for the provision of adequate health care facilities and public service facilities".

The right and opportunity to obtain health services applies to everyone, and the community, including victims of criminal acts, can take advantage of the health resources provided by the government. The right to health care does not mean the right for everyone to be healthy, or the government must provide expensive health care facilities beyond the government's ability. But it is more demanding that the government and public officials can make various policies and work plans that lead to the availability and accessibility of health care facilities for all in the shortest possible time.

c. Special Handling Rights

Article 10 of Law no. 23 of 2004 "Victims are entitled to:

1. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the stipulation of a protection order from the court;
2. Health services according to medical needs;

3. Handling specifically related to the confidentiality of the victim;
4. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation; and
5. Spiritual guidance service”.

Referring to the provisions of this law, there are no further provisions that explain the meaning and provision of specific services. If you look at the legal provisions in other laws, such as the child protection law and the juvenile criminal justice system law, it says that:

Article 17 paragraph 2 of Law 23 of 2002

"Every child who is a victim or perpetrator of sexual violence or who is in conflict with the law has the right to be kept secret."

Article 19 of Law no. 11 year 2012,

- 1) "The identity of the child, child victim and or child witness must be kept confidential in the news in print or electronic media".
- 2) "identity as referred to in paragraph 1 includes the name of the child, the name of the child of the victim, the name of the child of the witness, the name of the parent, address, face, and others that can reveal the identity of the child, child of the victim, and or child of the witness".

Special services that are provided to victims by providing separate or specific handlers for children at each stage or action. In the provisions of this law there are also no further provisions that explain the provision of special services provided to victims of domestic violence. However, when referring to the provisions of the child protection law, it states:

Article 18 of Law 23 of 2002

"Every child who is a victim or perpetrator of a crime has the right to obtain legal assistance and other assistance".

Besides that, in handling, child victims and or child witnesses are always given separate actions and handling that is different from adults at each stage of the examination process.

d. The Right to Assistance at Every Level of the Examination Process

Article 10 of Law no. 23 of 2004 "Victims are entitled to:

1. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the stipulation of a protection order from the court;
2. Health services according to medical needs;
3. Handling specifically related to the confidentiality of the victim;
4. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation; and
5. Spiritual guidance service”.

Everyone has the potential to become a victim or witness of a crime. However, not everyone knows how a victim and a witness should act in a crime. So that not infrequently many victims of criminal acts or witnesses in criminal acts do not dare to even be willing to be present at every process of examining a criminal act, as a result, such actions will result in other legal problems.

The birth of legal provisions that give the right to someone who wants to be examined at every examination process is a new breakthrough to apply protection to the

human rights of victims and witnesses. When referring to this legal provision, there is no further explanation regarding assistance at each level of examination, however if referring to the provisions of the criminal procedure law, assistance by legal counsel is the right of the examiner as regulated in the Criminal Procedure Code which reads:

Article 54 KUHAP

"That in the interest of defense, a suspect or defendant is entitled to legal assistance from one or more legal advisers during the time and at every level of examination, according to the procedure stipulated in this law."

So that assistance in every examination process is the right of the victim or witness to be free to provide information without any coercion, or pressure, let alone torture.

e. Protection Rights of All Parties

Article 10 of Law no. 23 of 2004 "Victims are entitled to:

1. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the stipulation of a protection order from the court;
2. Health services according to medical needs;
3. Handling specifically related to the confidentiality of the victim;
4. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation; and
5. Spiritual guidance service".

The law on the elimination of domestic violence does not provide information on what is meant by the right to spiritual guidance services. When referring to the provisions of article 24 of this law, it also only explains the obligations of spiritual mentors, which reads:

Article 24 of Law no. 23 of 2004:

"In providing services, spiritual guides must provide explanations regarding rights, obligations, and provide faith and piety reinforcement to victims".

To implement the rights of victims, the police must immediately provide temporary protection to victims by collaborating with health authorities, social workers, companion volunteers, or spiritual mentors within twenty-four hours of knowing or receiving reports of domestic violence. the temporary protection is given no later than seven days after the victim is received or handled. (Article 16, Law No. 23/2004)

Health workers provide health services to victims, must comply with professional standards and make a written report on the results of the examination of the victim and visum et repertum (Article 21 paragraph 1, Law No. 23/2004). Social workers in providing services through counseling to strengthen and provide a sense of security for victims, and deliver victims to alternative residences and coordinate in providing services needed by victims (Article 22 paragraph 1, Law No. 23/2004). Assisting volunteers guide victims in an objective and complete way to explain the domestic violence they experience, and actively provide psychological and physical reinforcement to victims (Article 23, Law No. 23/2004). In addition, advocates are also required to provide legal consultation to victims and provide clarity of information regarding the rights of victims. (Article 25, Law No. 23/2004)

The protection provided by the law concerning the elimination of domestic violence to children who are victims of criminal acts of domestic sexual violence is not expressly obtained in the article of the law because the law on the elimination of domestic violence regulates the protection law in general. So that in the provisions of the law on the

elimination of domestic violence, the provision of legal protection does not distinguish between a child and an adult.

So that both children and adults who are victims of criminal acts of sexual violence in the household are entitled to legal protection as stipulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Seeing the provisions contained in the law on the elimination of sexual violence in the household, it is still unclear in the regulation and form of protection for victims of sexual violence, so that in its application it is hoped that law enforcement officers are able to free themselves from the shadows of legal texts and can think and act objectively. Which is oriented to restorative justice so that it can provide benefits felt by victims of sexual violence in the household. According to Zulkarnain (2019) theoretically, there are two things in law enforcement. First, how are the legal rules? Second, how enforcement law is carried out properly and correctly.

In addition, when referring to the provisions contained in the articles of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims of Crime, there is one article that explicitly addresses the protection of children who become victims of crime. victims of criminal acts of sexual violence in the household because in the provisions of the law the protection of witnesses and victims provides protection to all those who are victims of criminal acts, both children and adults, as well as victims of criminal acts in all environments, including family, school, and neighborhood work and so on. So that legal protection is given to anyone and anywhere who is a victim of a criminal act.

Victims of criminal acts of sexual violence have rights that must be given to them because of the suffering experienced by the victim in the form of pain, suffering, fear, and a very deep traumatic feeling after the crime of sexual violence, and this must receive very serious attention. Victims should not be ignored in fighting for their rights but must be bridged by law enforcement in fighting for their fate (Wahid, Abdul and Irfan, Muhammad, 2001: 96). The rights obtained by victims of criminal acts are regulated in Article 5, which reads:

Article 5 Number 31 of 2014

1) Witnesses and Victims have the right to:

- a) obtain protection for the safety of his personal, family, and property, as well as being free from threats related to the testimony that he will, is currently, or has given;
- b) Participate in the process of selecting and determining the form of security protection and support;
- c) Provide information without pressure;
- d) Get an interpreter;
- e) Free from entangling questions;
- f) Obtain information regarding the development of the case;
- g) Obtain information regarding court decisions;
- h) Obtain information in the event that the convict is released;
- i) Their identity is kept confidential;
- j) Get a new identity;
- k) Get a temporary residence;
- l) Get a new place of residence;
- m) Obtain reimbursement of transportation costs as needed;
- n) Obtain legal advice;
- o) Obtain temporary living expenses assistance until the protection period ends; and/or
- p) Receive assistance.

IV. Conclusion

A criminal act is an act that results in a long-term negative impact on the victim, both physically and psychologically. Referring to the provisions in Article 10 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, legal protection that allows victims of a crime to be obtained, including: a. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the stipulation of a protection order from the court; b. Health services according to medical needs; c. Handling specifically related to the confidentiality of the victim; d. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation; and e. Spiritual guidance services.

In addition, when referring to the provisions contained in Article 5 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, the rights obtained by victims of criminal acts include: a. obtain protection for the security of his personal, family, and property, as well as being free from threats related to the testimony that he will, is currently, or has given; b. participate in the process of selecting and determining forms of security protection and support; c. provide information without pressure; d. get a translator; e. free from entangled questions; f. obtain information regarding the development of the case; g. obtain information regarding court decisions; h. obtain information in the event that the convict is released; i. identity is kept confidential; j. get a new identity; k. obtain temporary residence; l. get a new place of residence; m. obtain reimbursement of transportation costs as needed; n. get legal advice; o. obtain temporary living expenses assistance until the protection period ends; and/or p. Get assistance

References

- Bambang Waluyo, *Viktimologi Perlindungan Korban & Saksi*, (Jakarta: Sinar Grafika, 2014) hlm. 1.
- Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, (Jakarta: Kencana Prenada Media Group, 2008) hlm. 133
- Ediwarman, *Monograf Metodologi Penelitian Hukum Panduan Penelitian Skripsi, Tesis dan Disertasi*, (Medan: Sofmedia, 2015) hlm. 25-27.
- Kartika, A. (2020). The Urgency of the Criminal Provision Regulationss in Cooperatives Law at Indonesia. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, 947-955.
- Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia, Edisi Revisi*, (Bandung, Rafika Aditama, 2014) hlm. 40.
- Marcheyla Sumera, "Perbuatan Kekerasan/Pelecehan Seksual Terhadap Perempuan, *Lex et Societatis*" Vol 1, No. 2, 2013, hlm. 46
- Milles dan Hubberman, *Analisis data kualitatif buku tentang sumber data-data baru*, (Jakarta: Univrsitas Indonesia press, 1992) hlm. 15-20
- Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2010) hlm. 22
- Pramudya A. Oktavinanda, "Pendekatan Hukum dan Ekonomi Terhadap Kejahatan Pemerkosaan: Suatu Pengantar", *Jurnal Jentera*, Vol. 22, 2012, hlm. 27
- Tampil Anshari Siregar, *Metodologi Penelitian Hukum*, (Medan: Pustaka Bangsa Press, 2005) hlm. 103.

- Wahid, Abdul dan Irfan, Muhammad, Perlindungan Terhadap Korban Kekerasan Seksual (Advokasi atas Hak Asasi Perempuan), (Bandung, PT Refika Aditama, 2001) hlm. 96.
- Undang-Undang No. 35 tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 tahun 2002 tentang Perlindungan Anak.
- Undang-Undang Republik Indonesia Nomor 23 tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- Zulkarnain. (2019). Eradication Efforts of Drug Abuse in Indonesia. Britain International of Humanities and Social Sciences (BIOHS) Journal, 26-34.