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Legal Protection Against The Crime of Abortion Performed by Child Victims of Rape from Victimological Perspective

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ABSTRACT

Children are valuable assets that must always be guarded and protected; on the other hand, there is also inherent dignity, dignity, and rights as human beings, which must also uphold. However, he often gets rape treatment. As a result of being unable to accept the suffering experienced, the decision to have an abortion was chosen. In positive law, it does not legalize this abortion, but there are several considerations that judges can use to override the imposition of sanctions on abortions committed by children. Victimological studies can also be used as guidelines to determine the position of girls, whether they are perpetrators or victims of events. Of course, if you are a victim, you should obtain legal protection from the state. In this paper, they will discuss this problem through a case study. The type of writing used is normative juridical, secondary legal, and non-legal materials collected through library research techniques.

KEYWORDS

Legal Protection, Abortion Crime, Child Sexual Abuse.

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1 INTRODUCTION

Recently, rape cases have become a particular concern for society. Because rape cases are increasingly unresolved. As reported in the 2021 Catahu of Komnas Perempuan, the number of rape cases in 2020 has touched 229 patients, but of course, this data is not sufficient to represent all cases; like an iceberg, the number of cases detected is only at the surface level, it has not yet reached a vast and profound realm. There are many cases of rape that occur and target every group, both men and women, adults and children. However, it is women and children who are particularly vulnerable to being victims of rape.

There are several factors behind why children, especially girls, are always subject to being vulnerable to rape. The first is evident because of the cultural aspects of the Indonesian people who still alienate girls, so the impact of children, especially girls, is always domination. The second factor is the psychology of children who cannot make decisions to protect themselves from rape, and the third factor is gender inequality, where girls are biological of weaker energy than adult men. And the last is the paradigm or wrong view of the community about children as if children are described as the property of their parents, family, or immediate family becomes the perpetrators who mostly rape children, especially girls.

Launching data from the Lembaga Perlindungan Saksi dan Korban (LPSK) cases of sexual violence against children that occurred in 2016, there were 25 cases. In 2017 it increased to 81 patients, and in 2018 peaked at 206 points. Then in 2019, cases were found to be as many as 350 cases. Cases indicate that children, especially girls, are increasingly vulnerable, and patients are increasing significantly daily. The natural form of cases of rape against children that occurred recently, for example, a 16-year-old child who was raped by the Maluku police, then a rape case perpetrated by the child of a member of the Bekasi City DPRD against a 15-year-old girl, and even rape by an official Komisi Perlindungan Anak in East Lampung against children, and of course there are still many cases that are still pending and have not been voiced.

The biggest impact that a child may experience as a rape victim is to experience an unwanted or unplanned pregnancy. Pregnancy experienced will bring negative impacts such as experiencing physical, mental, and social suffering. Moreover, the child will experience psychological trauma and feel worthless in the eyes of society for the pregnancy they are experiencing. Pregnancy at a child's age will be very risky. A study released by UNICEF found that girls who gave birth before age 15 were five times more likely to die in childbirth than adult women in their 20s. In addition, a study published in the American Journal of Obstetrics and Gynecology conducted on women who became pregnant at a young age in Latin America found that girls aged 15 years or even younger were more likely to develop severe anemia and would be at increased risk of developing anemia. Greater postpartum hemorrhage. This is the severe impact that children must experience as victims of rape. Of course, it is not an easy thing for children to face all these problems.

As a result of the sexual treatment experienced by girls, they are faced with the fruit of *simalakama*, as if they have fallen on a ladder; girls are also faced with the decision to have an unplanned pregnancy. Of course, this becomes a very big problem for the victim, especially if the victim is also still in the education process; this is like a lightning strike in the daytime for them. When faced with this 'accident,' many victims prefer to hide and try to find answers to solve the problem, which they think is quite embarrassing. Some of them have finished with a cool head and weighed carefully for every decision. However, in general, they are more panicked, angry, and in a hurry, so they finally decide to have an abortion because they feel they are no longer strong enough to bear their heavy burden.

Abortion has existed since the beginning of human history. At that time, abortion was known as the termination of the womb before it was time. However, abortion has been controversial since ancient times. Some parties agree, and some do not agree to legalize abortion for rape victims, even though it is known that the victims suffer quite a lot due to this. The problem of abortion, especially for girls, is very risky; if they have an abortion, a life must be at stake or sacrificed. The hardest thing if the victim wants to have an abortion is the negative stigma that society will give to the abortionist. Social cohesion will flock to ostracize abortionists because they are considered to have no conscience and are inhumane. Such statements come from the public based on assumptions, and many do not know how painful and painful it is for victims of rape who want to have abortions. Plus, there are differences in knowledge in the community regarding abortion, so the responses given tend to be different from one another.

Naturally, the debate about abortion behavior continues to resonate in public, both in print and electronic media. Because every year this abortion has increased, no less than two million cases per year occur in Indonesia. So many experts study abortion behavior from various aspects, such as reproductive health rights, human rights, religion, social norms, legal norms, and many more. In the view of human rights, abortion is a behavior that takes the rights of others to live because this action has prevented the baby from being born into the world, viewed from the same perspective, abortion also limits the mother's right to obtain a decent life, in this case, the child has the right to get an education and continue their future, so it is not time for children to be obliged to take care of the baby that will be born later. Then from the religious aspect, abortion is considered an unlawful act. From the social aspect, this is contrary to the values adopted in the community, but on the contrary, abortion is a woman's right to obtain good reproductive health.

From a legal perspective in the Indonesian Criminal Code (KUHP), abortion is strictly prohibited by the state, and even the sanctions are quite severe. These sanctions are not only aimed at the women involved, but all those involved in the crime can also be prosecuted, such as doctors, traditional birth attendants, pharmacists who treat, and those who ordered and assisted the implementation process. According to the Criminal Code, any act of abortion with any motive, indication, and method and at any gestational age is a criminal act. As regulated in Chapter XII book II of the Criminal Code concerning crimes against life, which are contained in Articles 346, 347, 348, and 349 of the Criminal Code, in addition to that, it is also regulated in Article 299 of the Criminal Code.

With more debates on these issues, there is a form of justice that the children demand of rape victims, which is the right to abort the child. Besides that, they also have the right to obtain psychological rehabilitation, compensation, and much more. However, in the realization, it turns out that there are still many challenges that the children of rape victims have to face to fulfill justice, one of which is when they want to perform an abortion, both of culture, religious norms, and legal norms that exist in Indonesia. The law that should be a place of refuge for someone to seek justice turns out to be one-sided for the daughter of a rape victim. It seems to be rigid on the base legislator rules and does not study from the side of victimization attached to daughters who have abortions. Based on the above background, this study was formulated to determine how the law protects the criminal act of abortion committed by the child of a rape victim. Several major issues were discovered as a result of this backdrop, including:

1. What is the Position of Girls Victims of Rape in Abortion Crime Cases?
2. How is the legal protection provided by the state against the crime of abortion by child victims of rape from a victimological perspective?

2 Method

This study employs a qualitative research method used a normative juridical research. The normative juridical approach is an approach that is based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. Legal materials in this study were obtained from secondary data with primary legal materials and secondary legal materials. Primary legal materials are legal norms in the form of statutory regulations, international legal norms, customary law norms, Islamic legal norms. In this study, the legal materials used are various laws and regulations that regulate criminological theory. Secondary legal material is legal material whose contents provide an explanation of the primary material.

3 RESULT AND DISCUSSION

A. Chronology of the Crime of Abortion by Child Rape Victims in Jambi

To facilitate understanding of the material in this paper, the authors try to use the analysis of existing cases to identify and formulate the objectives to achieve. The case to be taken is the case of abortion by a teenage girl from Jambi who was a victim of rape. This case occurred in 2018, following the chronology:

1. September 2017: An older brother raped his sister. The trigger for this act was that the older brother was watching porn. At that time, the older brother was 17, while the younger brother was 15.
2. February 2018: The stomach of the rape victim bulged. Panicked to find out about the pregnancy, the victim, who is the younger brother of the perpetrator, massaged her stomach until she miscarried. The fetus was then wrapped in a tablecloth and discarded the next day. Then later, the fetus was found by residents, and the police immediately tracked the case.
3. 5 July 2018: File transferred to Muara Bulian District Court
4. 19 July 2018: Muara Bulian District Court sentenced him to 2 years in prison and three months of job training for his older brother as a rape suspect and six months in jail with three months of job training for his younger brother as a

suspect in the crime of abortion.

B. The Position of Girls Victims of Rape in Abortion Crime Cases

Every crime is attached to the perpetrator and victim, and there can be no crime between perpetrator and victim. Crime by Arif Gosta was defined as the result of interaction by the existence of a relationship between existing phenomena and influencing each other. This is an understanding in a broad sense which does not only include the notion of a crime legally but can also be interpreted as an act that causes suffering and cannot be justified. Based on Arif Gosta's theory, namely the Interaction theory and this interactive perspective, there are several interactions or problem studies that need to be reviewed in the occurrence of a crime, namely:

1. The perpetrators and victims of the crime
2. Legislators who formulate
3. The police are investigating
4. Prosecutor's Office
5. The judiciary decides
6. Observers or witnesses of the occurrence of the crime.

Before identifying the position of girls in these cases, it is necessary to know in advance their respective roles in the crimes mentioned above, and however, for this paper, we will only focus on perpetrators and victims.

a. Perpetrator

According to the Big Indonesian Dictionary, a perpetrator is a person who commits an act. The perpetrator is the person who commits the crime in question. It may be that the act was carried out intentionally or unintentionally as required by law and has caused an effect not desired by the law, whether it is a subjective element or not. Objective element, regardless of whether the decision to commit crime came from himself or because of the encouragement of a third party. In criminal law, this will determine a person to be the perpetrator or suspect for committing a crime if he fulfills several things, namely whether the act is regulated by law, meaning whether the offense violated has all of its elements fulfilled. Secondly, is there an intention arising from conscience? The perpetrator of the crime, and thirdly whether there is an element of responsibility that the perpetrator of the crime can carry out.

In terms of identifying the perpetrators of a crime, this can use several factors or aspects as contained in the study of criminology, for example, biological factors,

namely observing whether there are innate factors that cause the perpetrator to commit a crime. In addition to biological factors, several other factors can also be a driving factor for the occurrence of crime, namely psychological or psychological factors of a person and cultural aspects or encouragement from the surrounding culture.

Biological factors, see how from the innate physical structure of a person, whether they have a genetic predisposition that allows them to be a strong impetus for deviant behavior. Or does the person inherit abnormal tendencies that lead to deviant behavior in society? In the flow of criminology, the perpetrator can be identified through his biological physique, for example, whether he has an asymmetrical face shape, thick lips, a big nose, and so on. But behind that, there is a weakness when identifying criminals only from their physical and biological aspects. It is not necessarily the legacy of the ancestors left behind that is relevant and the same as the current or future generations. Another weakness when identifying from the physical aspect will tend to be racist, meaning that only physical characteristics attached to certain races will always be labeled criminals or criminals. So then, several more aspects emerge that can identify the perpetrators and the motives that occurred.

Psychogenic factors include intelligence, personality traits, motivation, fantasy, inner conflict, and wrong self-internalization, which is motivated by psychological problems. For example, children who come from families destroyed by divorce, most of them tend to choose the wrong association. Then other factors can also be seen in the perpetrator's response to various threats and pressures that cause the person to commit a crime, such as feeling frustrated, depressed, and so on. Most of them tend to vent to things like taking drugs to help reduce the burden on their minds. Actually, in humans, as stated by Sigmund Freud, there is a system consisting of three elements: the id, the ego, and the super-ego. In these three elements, humans sometimes have turmoil, which can lead to evil deeds committed.

The Id region will encourage the emergence of the ego and superego. The id will be closely related to the physical process to obtain psychic energy used to operate the structural system of his personality. The id is based on the principle of pleasure in two ways, namely reflex action and primary (by imagining) to get a stimulus. The id cannot judge right or wrong, moral or not, giving rise to the ego. The ego is the embodiment of the id, and the ego adheres to the principle of reality. This is where there will be an attempt to obtain the satisfaction required of the id. Next is the superego, which operates on an ideological principle. The superego is a moral force. He demands perfection and forgets realistic things. From Freud's psychoanalytic thinking, it can be used as a tool to identify criminals and the modus operandi used to get what he wants to achieve.

Next is the socio-cultural factor, which explains that a person can be a perpetrator of the crime by looking at social roles, social status, and the internalization of

symbols that may be wrong. So this factor that will reveal the perpetrators of crimes appears based on environmental influences.

Another opinion was also expressed by the criminal law scholar Capelli, and he divided the perpetrators or criminals into several types:

1. Criminals who commit crimes by psychopathological impulse, with the perpetrators:
2. Mentally ill people
3. Abnormal soul, but no mental illness
4. Criminals who commit criminal acts because of physical and spiritual disabilities and have a setback in their body and soul (organic), namely:
5. People with physical-spiritual disorders from birth and at a young age have difficulty being educated and cannot adapt to the general lifestyle.
6. People with physical-spiritual disorders with old age, disabled or invalid by accident, etc.
7. Criminals due to social factors, such as habitual criminals, criminals with economic difficulties, criminals by chance, and criminals in groups.

They are reviewing the perpetrators in criminal law. According to the doctrine, the perpetrator of a criminal act is anyone who carries out all the elements of a crime as stated in the law. As contained in Article 55, paragraph 1 of the Criminal Code, which states:

- (1) Sentenced as perpetrators of criminal acts:
 - Those who do, those who order to do, and those who participate in doing
 - Those who intentionally encourage others to do something by giving or promising something by abusing their power or dignity, by force, threat or misdirection, or by providing opportunities, means, or information. Namely, those who do it themselves, people who order others to do it, people who participate in it, and people who persuade or move others.

b. Victim of Crime

The United Nations 1985 the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power formulated that what is meant by victims are people who, individually or collectively, have suffered losses, including physical or mental injuries, emotional suffering, economic losses, or the substantive reduction of their fundamental rights, through acts of omission that violate the criminal laws that apply to the Member States, including laws that formulate the abuse of power as a crime. Article 1, paragraph 3 of the LPSK Law also gives more or less the same definition, and victims are those who experience physical, mental suffering, and material loss as a result of a criminal act. Further, Arif Gosita defines victims as those who suffer either physically or spiritually due to the actions of someone who tries to find the fulfillment of their interests or for the sake of others where it is

contrary to the interests of the human rights of the person who is suffering. Victims of crime can be classified into two, namely those that are individual or collective, and those that are direct, that is, the victims themselves receive the impact, and those that are indirect, that is, the wider community.

The victim is the party most harmed in the event of a crime; all interests and rights that should be obtained are violated or injured by irresponsible persons. Therefore, it is appropriate that the victim has the right to Protection and service for his interests, recovery, and justice. However, some communities in their development set aside the importance of the sacrifice and tend to see that the sacrifice is not the only guilty party. That is, the victim also can accelerate or allow the occurrence of a criminal act by the perpetrator to himself.

From the perspective of human rights, the importance of sacrifice is part of human rights. Human rights are the rights a person possesses as a matter of nature for his presence on earth. Rights come along with obligations. This means that when a person demands a right to be fulfilled, then there is an obligation that he must fulfill, namely by not harming the other party so that the criminal act or crime that occurred is part of the violation of human rights and has harmed the person who received the consequences of the crime.

There were various kinds of victims in the 7th UN Congress, namely.

1. Conventional crimes are victims of ordinary crimes, for example, Victim of Robbery, Victim of Rape, Victim of Murder, Victim of Deception, Victim of Assault, and Victim of Torture.
2. Victims of non-conventional or serious crimes, for example, Technology Victims, Industrial Pollution Victims, Racial Discrimination Victims, Slavery Victims, Human Trafficking Victims, Terrorist Victims, Malpractice Victims, Human Rights Crime Victims, and Natural disasters Victims.

Based on the review of the perpetrators and victims above, in the case of abortion by a child victim of rape, the girl's position is as the perpetrator of the victim. Girls are called perpetrators because they have committed abortions. Internal and external factors influence the urge to have an abortion. The internal factor is in him, who is psychologically not ready to accept the fact that the child acts based on a fear disorder in the psyche or soul in him. The external factor is the stigmatization of society that tends to isolate the child in social interactions, meaning that there is a pressure that the girl gets as a motivating factor to commit a crime. However, despite all that, the act of abortion will not occur if the girl is raped. So it can conclude that girls fully become victims, namely victims of rape, where they suffer various physical and psychological sufferings. And from the consequences that prompted the girl to become the perpetrator, but of course, in doing the act, there was no intention and encouragement from her to want an abortion.

C. Legal Protection Provided by the State against the Crime of Abortion by Child Victims of Rape Viewed from the Perspective of Victimology

In the legal system in Indonesia, crime or crime is included in the realm of public law. The logical consequence of an act of a perpetrator who violates criminal law and produces victims is that the State participates in providing punishment through existing institutions or devices. In short, violations that are the victim's business disturb the balance of order in society (the State). Apparently, this idea was noticed by the community, so a paradigm emerged: the community felt entitled to demand compensation from the perpetrators. This then becomes the cause of the loss of the victim's right to get revenge or compensation for the perpetrator personally. As a result, attention to victims of criminal acts is still very little compared to attention to perpetrators of criminal acts.

The takeover of the State to carry out prosecutions tends to forget the victim and reduce the rights and role of the victim to reclaim the freedom/happiness taken away by the perpetrators of the crime. And the victim is only part of the evidentiary system and not an interested party in the ongoing process. The process only focuses on efforts to punish the perpetrators and prevent crimes solely as a step to reduce the losses incurred and restore the condition of balance in society. On the other hand, the dialogue process with the victim seems to be ignored, and their interests or wishes are not accommodated. This is understood because the understanding of criminal acts only focuses on perpetrators who violate state-made laws.

Another problem in the enforcement of criminal law in Indonesia is not using the victim's perspective to decide the decision has caused various polemics in society. With imprisonment. The decision issued by the judge has ruled out the obligation to protect victims, especially girls. In the constitutional mandate, the State is obliged to provide protection for its citizens, and the State is also entitled to fulfill the rights of its citizens, such as the right to security, the right to life, and most importantly, the right to obtain justice before the law. But what happened was quite the opposite. Girls who are victims of the rape that happened to them must experience injustice in the eyes of the law.

If examined more deeply, several reasons can be used by the judge to review whether the accusation against a child victim of rape who has committed the crime of abortion is true and fair. The first is related to accountability. Accountability in criminal law is defined when the defendant is deemed unable to be responsible for the actions committed. The defendant can file a defense based on the reasons for

eliminating the criminal. One of them is the ability to be responsible, one of which is marked by the mental condition of the perpetrator, whether in normal health or not. It has been mentioned in the chronology above that when a child has an abortion, he feels afraid and feels inferior, being intimidated by the community, so it can be concluded that the child has a mental disorder.

The second consideration is to look at the health effects experienced by the girl. The formulation of Article 75 of Law Number 36 Year 2009 concerning health shows that abortion is clearly prohibited by law, but there are exceptions for this type of abortion, which is carried out to save the life of the mother. In the world of medicine, if the life of the prospective mother is in danger due to several factors, including the age factor, which is not yet mature, it will be fatal.

Article 75 paragraph (2) of the Health Law also contains additional provisions regarding the permissibility of abortion in pregnancy caused by marriage because it can cause severe psychological trauma for the rape victim. Mentally, girls have not been able to face the choice of their pregnancy, and there is a sense of worry, anxiety, and hopelessness that may even lead to death which causes the girl to decide to abort her pregnancy. Psychologically, there will be several things experienced by victims of pregnancy from rape, namely depression, trauma, and even madness.

The third consideration is respecting the reproductive rights of girls. As regulated in Article 72 of the Health Law, there are several reproductive rights guaranteed by law; these rights include:

- a. Live a reproductive life and sexual life that is healthy, safe, and free from coercion and/or violence with a legal partner
- b. Determine their reproductive life and be free from discrimination, coercion, and/or violence that respects noble values that do not degrade human dignity in accordance with religious norms.
- c. Decide for yourself when and how often you want to reproduce, medically healthy and not against religion
- d. Obtain correct and accountable information, education, and counseling regarding reproductive health.

Based on the description above, it can be concluded that unwanted pregnancy or pregnancy due to rape is a violation of the victim's reproductive rights. She has lost the right to determine matters relating to her reproduction and lost the freedom to determine her own pregnancy. And reproductive rights are part of human rights, so if the pregnancy is not of its own will, then it is very appropriate to have a legal

abortion under certain conditions.

The next and most important consideration so that a girl is not charged with abortion is to see that she is a child of a rape victim. He is a child who does not know what is going on inside him. He is called a victim because he has received various sufferings if it is classified; what happened to him is a form of family victimization. For some of the things above, child victims of rape should receive proper Protection and accommodate the interests and suffering experienced through a fair decision.

The State is one of the parties responsible for ensuring the rule of law and the Protection of children, so in the case above, there are several forms of legal protection that must be provided by the State to girls who are rape victims who commit the crime of abortion, including:

- a. In accordance with Article 59 paragraph (2) of the Juvenile Criminal Justice System Act, namely humane treatment by taking into account the needs according to their age. Imprisoning a 15-year-old child who is a rape victim who performs an abortion is not a humane act. Even though abortion is an act that violates the law and is against religious norms, it is not his will. Of course, in the child's conscience, there was no intention to commit the crime at all; he was only faced with a situation where he could not choose. Therefore, the State should be present by not imprisoning or providing other criminal sanctions for the child. The child still has a future that he must achieve; his dreams and aspirations should not be destroyed because of the punishment he should not get. This is also in line with point e in this article, namely that children must be freed from torture and inhumane punishments and degrading their dignity and status.
- b. The State provides legal Protection that can guarantee the best interests of the child and the survival and development of the child. Including the State must respect the child's decision to have an abortion because he is unable to endure the suffering of letting the baby in his stomach be born. This will certainly hinder the child's growth and development, depriving him of his independence and injuring his psyche.

The best way that the State can do for the perpetrators of the crime of abortion or child victims of rape is to provide rehabilitation for the child, in addition to restoring the victim's child psychologically. It is ironic when a child who has experienced severe physical and psychological suffering is then snared in punishment. The law should exist to provide justice for those who experience suffering, lest the law is only used as a means of retaliation for someone's actions without considering other factors and impacts that may affect a person. Like Hammurabi's law, an eye for an eye becomes cruelty to the perpetrator of the victim.

The law should not be too rigid and legalistic (based on legislated rule), but the law must also look at the human side.

4 CONCLUSION

The crime of rape is increasing day by day. Of course, anyone can get rape treatment, including girls who are very vulnerable to accept it. As a result of the actions that occur in girls, some have to accept negative impacts, both physically and psychologically. However, the biggest impact he had to get was a pregnancy against his will. This creates fear and concern for girls, so the decision to have an abortion arises. Like what happened to a girl in Jambi, she was raped by her sister because she had suffered quite a lot; she decided to have an abortion. Unfortunately, the action was discovered by the authorities and processed in court. In its decision, the court declared the child's actions guilty and gave him criminal sanctions. However, if examined further using the perspective of victimization, the girl in the above case should be the victim so that the state should be present to protect these girls, in the form of not imprisoning and providing sanctions and should provide rehabilitation as well as psychological assistance to these girls.

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6 DECLARATION OF CONFLICTING INTERESTS

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*It is not wisdom but authority
that makes a law*

Thomas Hobbes