

RESEARCH ARTICLE

Sexual Violence against Children and Women: How Their Rights Fulfilled?

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Abstract

The implementation of juridical death penalty has been regulated in Law No 2 of 1964 about the procedures of criminal implementation dropped by courts within the General and Military courts. The implementation of law on the implementation of death penalty is still disputed. The debate over the existence and execution of death penalty has been linked to the human right, the effectiveness, and the purpose of persecution. Through the constructivism with ontology, epistemology, and methodology, it can answer the community's understanding and philosophical basis of legislation on the implementation of the death penalty, as well as the dynamics of its relation in Riau province Indonesia. This study is expected to contribute the improvement of the deadly criminal code in the future. This study aims to analyze the protection for children and women on sexual violence cases in Indonesia. This study used a normative legal study, which analyze the laws and regulation concerning legal protection for women and children in Indonesia.

Keywords: *Legal Protection; Women Protection; Sexual Violence; Child Protection; Human Rights*

1. INTRODUCTION

In Indonesia cases of sexual violence each year has increased, the victims are not only from adults now have penetrated adolescents, children even toddlers. The phenomenon of sexual violence against children is

becoming more frequent and becoming global almost in many countries. Cases of sexual assault against children continue to increase over time. The increase is not only in terms of quantity or number of cases that occur, even from quality. And more tragic again the perpetrators are most of the family environment or the environment around the child is located, among others in his own home, school, educational institutions, and social environment of children (Noviana, 2015; Wantu & Sarson, 2020).

Children should get their rights and one of them is to get protection from various parties, if the child is already in the school environment, the child must get protection from the school. If the child is already in the family environment, the role and function of the family must be run properly. In addition, there are also laws that regulate the rights of children namely, Law Number 23 of 2002 on Child Protection article 1 (2) states that "*Child protection is all activities to guarantee and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with human dignity and dignity, and have protection from violence and discrimination*". Looking at the law on child protection, every child should have the same rights (Sari & Nulhaqim, 2021; Annisa, 2020; Choirunnisa, 2021). From the side of life of nation and state, the child is the future of nation and generation successor of the nation's ideals, so that every child has the right to survival, to grow and to develop, participate and be entitled to protection from acts of violence and discrimination as well as civil rights and freedoms (Nursiti, 2011).

Furthermore, some previous research emphasized and found that crimes of decency and sexual harassment are two forms of violation of decency that is not only a matter of national law of a country but is already a legal matter of all countries in the world or a global problem. *First* is a factor that originates or is contained within the self-perpetrator with the intention that which influence someone to do a crime arises from within the self the perpetrator itself is constituted by a factor offspring and psychiatric (*mental illness*). Factor the *second* is the originating factor or is outside the offender's personal self its meaning is that affect someone to commit a crime arise from outside the self-perpetrator itself based on household factors, and factors

technology and environment (Hamzah, 1986; Rahmatika, 2021; Lestari, 2021; Ilyasa, 2021; Wibowo, 2020).

Sexual violence is one of the most characteristic forms of violence experienced by women because it is closely related to the way of view of the society that places women as sexual objects. Based on data resumes conducted by LRC KJHAM from 331 cases against women in Central Java as many as 448 women became victims of sexual violence.

Attention and protection of the interests of victims of sexual violence either through the judicial process or through certain social care facilities is an absolute part that needs to be considered in criminal law policies and social policies, both state and social institutions. Based on the objectives and responsibilities of the state to realize equity of general welfare justice, the rights of victims of sexual violence to be protected are an integral part of human rights in the field of social security. Attention to the women's fundamentalism is increasingly influential by increasing attention to women's issues both at the level national, regional, and international (Sitorus, 2019; Kasim & Kamba, 2019).

The protection of victims in the criminal justice process cannot be separated from the protection of the victims according to the provisions of the applicable law. In the current positive law has regulated the issue of sexual violence, but all the rules have not fully comprehended the deep issues of sexual violence. Limited scope of sexual violence itself as regulated in Law Number 23 Year 2004 regarding Elimination of Domestic Violence, Law Number 39 Year 1999, Law Number 23 Year 2002 as amended by Law Number 35 Year 2014 on Child Protection, and Law Number 39 Year 1999 on Human Rights. The limited scope of such sexual violence crimes, limiting the problems of sexual violence experienced by victims. For example, related to sexual harassment, sexual exploitation, rape, coercion of abortion, marriage, coercion of prostitution, sexual torture, and sexual slavery.

There are still limited protection arrangements for victims in legislation in which the victim only gets protection if they take legal process. 28 Whereas Law Number 23 Year 2002, as amended by Law Number 35 Year 2014 on Child Protection, is limited to the protection of children (Surayda, 2014).

2. METHOD

This study is normative legal study, which analyze the case based on existing laws and regulations in Indonesia. The focus of the case concerning legal protection for women and children as victim of sexual violence.

3. RESULT AND DISCUSSION

A. Legal Protection for Victim of Sexual Violence: A Normative Approach

Indeed, the law can be seen from eight meanings, that is internal law the meaning of the ruler, the law in the sense of the officers, the law in the sense of attitude, law in the sense of the rule system, the law in the sense of value chain, internal law meaning of law, law in the sense of legal science, law in the sense of discipline of law. Some legal meanings from various points of view can be described that the law is not solely a written law and legislation law enforcement officers as they are understood by the public who do not know about the law? But the law also includes things that are already live in the social community (Dirdjosisworo, 2008).

The definition of legal protection is a protection that awarded to the law's subjects in the form of a good legal device preventive or repressive, whether written or otherwise written. In other words, the protection of the law as an illustration of function of law, that is the concept whereby law can provide justice, order, certainty, benefit, and peace (Rahayu, 2009).

While the concept of protection in Law Number 13 Year 2006 on Protection of Witnesses and Victims emphasized that protection is an effort in the fulfillment of rights and the provision of assistance to provide a sense of security to witnesses and/or victims that must be implemented by witness protection agencies and victims or other institutions (Indonesia, 2006, UU No. 13/2006).

The crime victims are basically the most parties suffered in a crime, did not receive protection as much as provided by law to perpetrators of crime. In discusses criminal procedural law especially in relation to rights as human beings, there is a tendency to explore related matters

with the rights of the suspect regardless of the rights of the victim (Hamzah, 1986).

Legal protection against victims of sexual violence constitutes portrait of the reality of life in society. The statement contains understanding that everyone is entitled to protection without differences and discrimination. Therefore, protection of children and women victims of sexual violence to emphasize to us all on the importance of protecting children and women who have positions same before the law (Dewi, 2009).

Legal protection of crime victims as part of protection society, can be manifested in various forms, such as through giving restitution and compensation, medical services, and legal assistance. Compensation is something that is given to those who suffer a loss equally considering the damage he suffered (Bentham, 2006).

There is a difference between compensation and restitution, if compensation a rise from the victim's request, and is paid by the public or constitutes form of public or state responsibility (the responsible of the society), while restitution is more criminal, a rising out of the decision of a criminal court and paid by a convicted person or a form liability of the convicted person (Mansur, 2007).

Victim protection may include a form of protection abstract (*indirect*) and concrete (*direct*). The protection abstract is basically a form of protection that can only be enjoyed or felt emotionally (psychic), such as satisfaction (satisfaction). Meanwhile, concrete protection is basically a form protection that can be enjoyed significantly, such as giving in the form of or material or non-material. Material giving can be in the form of compensation or restitution, the exemption of living expenses is materials may be compensation or restitution, exemption of fees life liberation from threats, from degrading preaching humanity (Syaufi, 2017; Arief, 2007).

The definition of victim protection can be seen from two meanings, namely:

- 1) Can be interpreted as legal protection to not be a victim criminal acts, (meaning protection of human rights or legal interests someone).
- 2) Can be interpreted as protection to obtain guarantee / compensation the law for the suffering/loss of the

person who has been the victim of the act criminal, (so synonymous with sponsorship of victims)

3) In the concept of legal protection against victims of crime, there are also some legal principles that require attention. This matter caused in the context of criminal law, the legal principle should be colouring both material criminal law, formal criminal law, and law criminal conduct. The principles are as follows:

a) The principle of benefit

This means that the victim's protection is not only intended for achievement benefit (both material and spiritual) for victims of crime, but also, expediency for the wider community, especially in efforts to reduce the number of criminal acts and create order community.

b) The principle of justice

That is, the application of the principle of justice to protect the victim evil is not absolute because it is also limited by taste justice must also be given to the perpetrator of the crime.

c) The principle of balance.

Because the legal purpose in addition to providing certainty and protection of human interests, also to restore the balance of the disturbed social order leads to the situation the original (*restitutio in integrum*), the principle of acquiring balance an important place in the recovery of victims' rights.

d) The principle of legal certainty

This principle can provide a strong legal foundation for the authority's law enforcement while performing his duties in an effort provide legal protection to victims of crime (Gosita, 1993).

4. CONCLUSION

This study concluded that the protection for women and children have been provided by several laws and regulations, however, the implementation still faced many problems, including the legal culture, structure, and legal substance itself.

5. DECLARATION OF CONFLICTING INTERESTS

The Author declares that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

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