

The Legal Protection For Children Of Sexual Violence Victims In Indragirii Hilir Regency

Fitri Wahyuni¹, Aris Irawan², Siti Rahmah³

¹ Fakultas Hukum, Universitas Islam Indragiri Riau Indonesia

² Fakultas Hukum, Universitas Borneo Tarakan, Kalimantan Utara, Indonesia.

³ Fakultas Hukum, Universitas Islam Indragiri Riau Indonesia.

* Corresponding Author:
Email:fw160586@gmail.com

Abstract

Currently, the phenomenon of children sexual abuse is a crime that is very distressing to society. It shows that children sexual abuse is an iceberg phenomenon that must be prevented so that children are no longer victims of sexual harassment by the responsible party. This research used normative legal as research methods. The data sources in the form of secondary data including primary, secondary and tertiary legal materials. Meanwhile, the data analysis used is in the form of qualitative analysis and deductive conclusion. From the results of this research, it was concluded that the protection efforts had been made through the regulation of laws and penal efforts both in the Criminal Code and the children protecting laws by providing criminal sanctions for sexual offenders. However, these efforts were not sufficient and they must be carried out through non-penal efforts by providing sex education from an early age and teaching religious values.

Keywords: Legal Protection, Sexual Violence, Children

I. INTRODUCTION

The children are both a mandate and a gift from God Almighty, which we must always protect because they are inherent in their human dignity and human rights which must be upheld [1]. In facts, the children are often victims of crime. It can be seen from the data of the sexual harassment. In 2017, there were no cases of children violence. In 2018, KPAI recorded 24 cases of children violence. [2] In 2019, the Indonesian Children Protection Commission (KPAI) recorded 21 reports related to violence experienced by the children. Based on SIMFONI PPA data, on January 1-June 19, 2020, there have been 11 cases of children violence, including 852 cases of physical violence, 768 cases of psychological violence, and 1,848 cases of sexual violence [3].

Table 1. Number of Children Violence Cases from 2017-2020

No	Year	Number of Cases
1	2017	-
2	2018	24
3	2019	21
4	2020	11
Total		56

Relating to the table above, it can be seen that there is an increase in the number of sexual violence in Indonesia from year to year. The same case happened in Indragiri Hilir regency, there are worrying cases of sexual violence on children according to the table above by the Indragiri Hilir Resort Police (Polres) data, in 2017 there were zero cases of sexual violence. In 2018 there were 24 cases.

Then, in 2019, there were 21 cases, in 2020 there were 11 cases of data while decreasing sexual violence on children. [4] It shows that sexual violence on children is an iceberg phenomenon, it means that the numbers cases are only from victims who report it, while those outside are still many victims who do not dare to report for certain reasons. This problem needs to be prevented so that children are no longer victims of sexual violence by the responsible parties.

Generally, the children cannot protect themselves from various actions that cause mental, physical and social harm in various social lives. The children must be assisted by others in protecting themselves, because of the situation and conditions that occur on children. Additionally, we have to prevent and overcome a crime; we also have an obligation to protect ourselves and those closest to you, or anyone else from a threat of crime. [5] In order to protect the children and to avoid criminal acts and sexual violence, the purpose and rationale for legal protection of children cannot be separated from the goal of how to realize children's welfare as an integral part of realizing social welfare as a whole. [5] By the principle that children are the next generation of nation because on their shoulders lies the nation's duties that have not been completed by previous generations. As the next generation of the ideals of the nation and state, the children must be able to grow and develop into adult humans who are physically and mentally healthy, intelligent, happy, and have high morals and values. Therefore, the children protection is an absolute thing that must be considered in the form of providing welfare in the context of overall social welfare. Thus, in realizing the protection and welfare of children, relationships of institutional laws and regulations are needed.

II. RESEARCH METHOD

In this research, a normative legal was used as research method. It is also used descriptive and analytical. The type of data used in this research is secondary data using the following data sources:

1. Primary legal materials can be in the form of statutory regulations, among others, laws, especially the Criminal Code (KUHP) and children protection laws.
2. Secondary legal materials in the form of research results in the form of a thesis and dissertation, papers presented in national and international seminars and accredited journals / scientific papers published by educational institutions as well as literature books related to the object of research.
3. Other tertiary law materials dictionaries / languages, encyclopedias, etc.

This research used qualitative analysis as data analysis. The qualitative analysis is an analysis by describing / describing the issues to be studied. The analysis stage starts from data collection, data processing and data presentation. Last, the conclusions can be drawn deductively.

III. RESULT AND DISCUSSION

Regulation of Legal Protection for Children Sexual Victims In Indragiri Hilir Based On Indonesian Law

The legal protection is an act in protect legal subjects based on the applicable laws and regulations accompanied by sanctions if anyone commits *wanprestatie* (default). [8] The legal protection for children can be interpreted as an effort to protect the law on freedoms of children and human rights of children (*fundamental rights and freedoms of children*) as well as various interests related to welfare of children. [9].

The legal protection for children covers a wide scope. In a state perspective, the state protects its citizens including children can be found in the preamble of the 1945 Constitution, especially for the children protection, Article 28B paragraph (2) of the 1945 Constitution. It states that every child has the right to survival, growth and development, and has the right to be protected from violence and discrimination.

Regulations for the children protection on victims of sexual violence are contained in the existing laws and regulations in Indonesia.

1. Criminal Code (KUHP)

Article 287 paragraph (1) of Criminal Code states: [10]

Anyone who has intercourse with a woman who is not his wife, he knows or should think that the woman is not yet 15 years old, if it is not clear how old she is, that she is not yet married, shall be punished by a maximum imprisonment of nine years.

Article 290 paragraph (3) of the Criminal Code states:

By a maximum imprisonment of seven years, anyone intercourse a person whom he knows or should reasonably suspect that he is not yet fifteen years old or has not yet been married, to commit or allow to commit obscene acts, or to have intercourse outside of marriage with another person.

2. Children Protection Laws

Law of the Republic of Indonesia Number 35 of 2014, concerning Amendments to Law Number 23 of 2002 concerning the Children Protection is a *lex specialist derogate lex generalis* who ignore Article 287 of the Criminal Code. The Children Protection Law includes protection for children against perpetrators of sexual violence with criminal threats, as stated in Article 81 states that:

- a. Every person who violates the provisions referred to in Article 76D shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiah).
- b. The criminal provisions as referred to in paragraph (1) shall also apply to any person who deliberately commits deception, a series of lies, or induces a child to have intercourse with him or other people.

Based on the criminal provisions as mentioned above, the legal protection for children through statutory regulations is very strict in imposing sanctions against perpetrators of children sexual violence, the punishment is imprisonment of 15 (fifteen) years. The maximum limit of this sentence is higher than the maximum sentence limit in the Criminal Code which only threatens a maximum prison sentence of 9 (nine) years.

Forms of Legal Protection for Children of Sexual Violence Victims in Indragiri Hilir Regency

In order to prevent threat of sexual violence by adults, there are several legal protections that can be done, including:

1. Penal Legal Protection

The legal protection through penal efforts, such as protection carried out after the occurrence of a crime or before the occurrence of a crime, with the aim that the crime does not happen again. Penal protection in a criminal policy is the prevention of crime by providing criminal sanctions for the perpetrators so that it becomes an example for other people does not commit crimes. The effort to overcome crime by using criminal (*legal*) sanctions is conventional method as human civilization itself. Even now, the criminal law is still used and relied on as a means of criminal politics. Criminal law is almost always used in legislative products to frighten and secure various crimes that may occur in various fields. [11].

The legal protection for children sexual violate through penal efforts is carried out in a repressive manner. The repressive crime prevention is the effort to protect the law by giving pressure to the perpetrator of the crime, with the aim that the crime does not happen again. The repressive legal protection is aimed at the perpetrators of these crimes, starting with efforts to arrest, prosecute in court, and punish perpetrators of sexual violence on children.

2. Non-penal Legal Protection

Rational efforts in controlling or overcoming the crime (*criminal politics*) are not only by using penal efforts, but also non-penal efforts. Non-penal control means prevention without using legal sanctions, which means the prevention of crimes that are more preventive in nature. These non-penal efforts can cover a very broad area in all sectors of social policy. Among the non-penal efforts made is through Sex Education from an early age.

So far, when we are talking about sex, what most people think is sex. Actually, sex means gender, which biologically distinguishes between men and women. Meanwhile, sexuality involves several things, namely:

- a. The biological dimension relates to reproductive organs, how to care for cleanliness and health
- b. The psychological dimension, sexuality is related to role identity of gender, feelings about sexuality and how to carry out its function as a sexual being.
- c. The social dimension relates to how sexuality appears in relationships between humans and how the environment effects of views about sexuality and the choice of sexual behavior.

The cultural dimension shows that sexual behavior is part of the existing culture in society [12]. Parents play an important role in sex education for children. Lack of understanding makes children the prey of sexual predators. Cases of sexual violence on children (*child abuse*) can be carried out by strangers and closest to the children. Therefore, the parents have an important understanding of early childhood sex education for their children. It is very important that sexual crimes are increasingly prevalent and the victims start from children as young as 3 years old. The problem is the parents still reluctant in providing an understanding of sexuality because sex is still considered taboo, and do not need to be given to children from an early age. The purpose of sex education is not only to learn about biological or social aspects but it is also concerning psychological, cultural, moral, ethical and legal issues. Another goal of sex education is to prevent sexual harassment at an early age, but it emphasizes the need for appropriate information about sexual behavior and tries to understand human sexuality as an important part of the overall personality. Without adequate knowledge, the children are easily victimized by irresponsible individuals. Thus, it is necessary to have proper sex education for children so that they get adequate knowledge.

The sex education should be given to children who have grown up or adolescents, either through formal or informal education. It is important to prevent bias in sex education, and knowledge about reproductive health among adolescents, and the parents play an important role in providing early sex education for children. The sex education is an effort to teach, raise awareness, and provide information about sexual problems. The information provided includes knowledge about the function of the reproductive organs by teaching morals, ethics, commitment, and religion so that there is no '*abuse*' of the reproductive organs. By learning about sex, it is hoped that the

children will be able to maintain the reproductive organs in their bodies and other organs that cannot be touched by other people. Another effort is to provide education and teaching of religious values for the children so that they are protected from sexual crimes.

IV. CONCLUSION

The legal protection for children of sexual violence victims is an effort that must be done considering that children are the next generation of the nation and children's rights must be protected and respected. This protection effort is contained in a number of laws and regulations in Indonesia but there is insufficient protection through legislation and penal efforts (investigation, prosecution, trial and, judge verdicts). However, it is necessary to provide non-penal protection through teaching good values and morals to children, so that the children cannot be victims of sexual violence.

REFERENCES

- [1] Penjelasan atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak
- [2] <https://jabar.tribunnews.com/2019/01/18/angka-kekerasan-terhadap-anak-selama-2018-meningkat-ada-pertambahan-sekitar-300-kasus>
- [3] <https://www.kemenpppa.go.id/index.php/page/read/29/2738/angka-kekerasan-terhadap-anak-tinggi-di-masa-pandemi-kemen-pppa-sosialisasikan-protokol-perlindungan-anak>.
- [4] Data Polisi Resort (Polres) Indragiri Hilir, hasil survey awal di Polres Kabupaten Indragiri Hilir tanggal 9 April 2020.
- [5] Siti Hikmah, *Mengantisipasi Kejahatan Seksual Terhadap Anak Melalui Pembelajaran "Aku Anak Berani Melindungi Diri Sendiri"*, Studi di Yayasan al-Hikmah Grobogan. Sawwa, Jurnal Studi Gender, Volume 12, Nomor 2, April 2017, hlm 189
- [6] J.H.R. Barbosa, *O uso de materiais pictóricos industriais pelos artistas nas décadas de 1950 e 1960*, **PhD Thesis**, Universidade Federal de Minas Gerais, 2017 p. 312.
- [7] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Cetakan ke – 11, PT Raja Grafindo Persada, Jakarta, 2009, hal. 13–14
- [8] Sedarmayanti & Syarifuddin Hidayat, *Metodologi Penelitian*, Mandar Maju, Bandung, 2002, hlm. 23.
- [9] Muhammad Zainuddin, 2007, *Kebijakan Hukum Pidana Dalam Rangka Penanggulangan Kejahatan Pedofilia (Tesis)*, Universitas Diponegoro, Semarang, hlm. 114
- [10] Waluyadi, *Hukum Perlindungan Anak*, Mandar Maju, Bandung, 2009, hlm.1
- [11] Moeljatno, *Kitab Undang-Undang Hukum Pidana*, Bumi Aksara, Jakarta, 2003, hlm.10.
- [12] Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, PT. Citra Aditya Bakti, Cetakan ke-2, Bandung, 2005, hlm 12.
- [13] <http://dokterkecil.wordpress.com/2011/05/30/pendidikan-seks-sex-education-sejak-dini>.