

Legal Protection of Children as Victims of Sexual Crimes by Law Number 35 of 2014 Of Child Protection

Salmah Novita Ishaq¹, Muhadar², Abd. Asis³

¹Student at Graduate School of Hasanuddin University.

²Professor on Legal Science, Faculty of Law, Hasanuddin University.

³Associate Professor on Legal Science, Faculty of Law, Hasanuddin University.

Abstract: Sexual offenses against children is a criminal act that greatly affects the future of the young generation. The law shall protect the interests of the child both in the substance, structure and legal culture itself as well as adequate facilities and infrastructure. Rehabilitation efforts by law enforcement officers are urgently needed to protect the child's future.

Keywords: Legal Protection, Children, Sexual Crimes.

Date of Submission: 02-08-2017

Date of acceptance: 30-11-2017

I. Introduction

Children as creatures of God Almighty have human rights as other human beings, so that no human being or any other can take the right. In the life of the nation and the nation, the child is the future of the nation and the next generation of the nation's ideals so that every child has the right to survive, grow and develop, participate and be entitled to protection from acts of violence and discrimination as well as civil rights and freedoms.¹

A visionary view, a child is a form of investment that becomes an indicator of the success of a nation in carrying out development. The success of child development will determine the quality of human resources in the future.² In Article 28 B Paragraph (2) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter abbreviated to the 1945 Constitution of the Republic of Indonesia) states that the child has a strategic role and the state guarantees the right of every child to survival, growth and development and for the protection of violence and discrimination. Therefore, the best interests for children should be respected as the best interests for the survival of mankind.³

Children are part of the community, they have the same rights as other communities to be protected and respected. Every country anywhere in the world is obliged to give sufficient attention and protection to the rights of the child, which include civil, economic, social and cultural rights, but it seems that the position and rights of the child when viewed from a juridical perspective have not received attention Seriously both by the government, law enforcement and society in general and still far from what should be given to them. This condition is compounded by the weak implementation of the law on the rights of the child committed by law enforcement officers themselves.⁴

This punishment is the reason for a new legal effort against the perpetrators of sexual violence against children in order to provide a deterrent effect. But on the other hand the existing law and applied to ensnare perpetrators of this crime of sexual violence in the sense of not providing justice for the victims. Victims who in fact are children who should get protection will get treatment that can provide traumatic impact psychologically that can be prolonged until he matures until his lifetime and make him lose his future due to the trauma.

Attention to the issue of child protection as an object of crime has been discussed in several international meetings, such as the Declaration of Geneva on the Rights of the Child of 1924 recognized in the Universal Declaration of Human Rights of 1948. Then on 20 November 1958 the UN General Assembly passed the Declaration of The Rights of the Child (Declaration of the Rights of the Child).⁵ Then the international instruments in the protection of children included in the instruments of human rights recognized by the United

¹Eka Tjahjanto. *Implementasi Peraturan PerUndang-undangan Ketenagakerjaan Sebagai Upaya Perlindungan Hukum terhadap Eksploitasi Pekerja Anak*. Tesis. Program Pasca Sarjana. Universitas Diponegoro. Semarang, 2008. Hal. 53

²Bagong Suyanto, *Pekerja Anak dan Kelangsungan pendidikannya*, Airlangga University Press, 2003, hal.21

³Explanation Of Law No. 11 Of 2012 of The Child Criminal Justice System.

⁴Handar Subhandi Bakhtiar, *Penerapan Sanksi Pidana Dan Tindakan Terhadap Anak Menurut UU No.11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak*, Hukum Acara, Universitas Muslim Indonesia, 2015, hal 2

⁵Muladi dan Barda Nawawi Arief, *Bunga Rampai Hukum Pidana*, Alumni, Bandung, 1992, hal.108

Nations are UN Rules for the Protection of Juveniles Deprived of Their Liberty, the UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), UN Guidelines for The Prevention Of Juvenile Delinquency (The Riyadh Guidelines).⁶

II. Methods Of Research

In this study using the type of normative legal research (normative legal research).⁷ The selection of this type of normative research is related to the formulation of the problem that becomes the issue of legal research and the type of normative legal research is used to analyze the content, nature and legal tasks set forth in legislation or within those contained in the substance of the law.

Data collection technique In this legal research, legal materials are collected using literature study techniques or library research. This research is conducted by examining the literature or legal literature that has relevance to the study material and has been published, such as laws and regulations, court decisions, books of law. The legal literature is then used in terms of inventory views and legal doctrines of legal scholars to be criticized or as justification in the study discussion.

Data analysis used in this research that is using qualitative descriptive analysis technique which more use analysis which purpose to find relationship which explain causes in social facts that happened. Quantitative research is done by collecting data and analysis results to obtain information that must be concluded.

III. Results And Discussion

According to the results of the author's analysis, there are some things that have not implemented the legal protection for child victims of violence as described below:

1. Legal Substance

In the effort to protect the law against the child it is necessary to have a harmony or coherence between different laws and regulations of different degrees. Because the incompatibility between the rule of law can occur for example between laws that are peculiar to general law, inter-laws that are "higher with lower regulation, between the previous law and the Apply now. These variables can affect the issue of law enforcement in this context of legal protection because the purpose of establishing a regulation is to provide legal certainty, benefit and fairness. Therefore, in order to avoid so that there will be a regulation does not apply effectively in society, it is necessary to consider the principles and objectives of the formation of the law itself.

The consequences of Indonesia as a state of law, then the beginning of law enforcement guided and refers to the provisions of legislation that has been declared effective. From this law, the law enforcers work, thus the law as a guide and guidance for law enforcement in carrying out its duties and functions as a guardian of order and security in society. Sometimes a legislation already exists, but it can not work effectively because its substance is incomplete or its implementation regulation has not been published. The completeness and clarity of legal material of a legislation is absolutely necessary. Especially if according to law enforcers that the rule of law is not in the set in the law, of course seek another legal basis which he thinks more appropriate applied in the event. Likewise, the Child Protection Law provides the basis for providing legal protection for child victims of violence.

2. Legal Structure

The legal structure intended in this paper is law enforcement officers in charge of legal protection for children facing the law at their age and more specifically against children experiencing victims of violence. The legal structure ranges from peyidik, prosecutor, judge. Below is the role of each legal structure in providing legal protection for child victims of sexual violence

Formally, the Child Protection law also lacks, Child Protection legislation does not contain formal rules in which child protection legislation instructs law enforcers at all levels of the examination so that child victims of violence are accompanied by legal counsel, Regarding its right to obtain free legal assistance or at the expense of the State. In addition there are technical constraints when conducting an investigation of children as victims of sexual crimes, the constraint is in terms of how the process of collecting evidence for cases of sexual violence in general there is no witness other than the victim himself who experienced it, because there is a psychological burden so that The victim's lack of frankness is caused by fear, embarrassment, trauma and the threat of the perpetrator, and the witness is not present in the examination process due to the lack of awareness of the witnesses to give testimony before the investigator because they do not want to be involved in legal matters.

⁶Moch. Faisal Salam, *Hukum Acara Peradilan Anak di Indonesia*, Mandar Maju, Bandung. 2005. Hal.15

⁷According to Abdul Kadir Muhammad, that normative law research is to examine the laws that are conceived as norms or rules applicable in society. Normative legal research is also called theoretical / dogmatic legal research because it does not examine the implementation or implementation of law.Pandang. Quoted from the book:Hukum dan Penelitian Hukum, PT. Citra Aditya Bakti, Bandung, 2004. hal. 52.

3. Legal Culture

Legal Culture basically embraces the values underlying the prevailing laws, and which values are abstract conceptions of what is considered good so as to be obedient and what is considered bad to be avoided. In law enforcement the above values of culture can be spelled out in solid norms and views in attitudes and actions as the final set of values for creating a social tool, maintaining and maintaining social control to create peace In the social life of the community.

Author's search related to the rule of law in this case Law No. 35 of 2014 on Child Protection, the paradigm that the function of law Number 35 Year 2014 on Child Protection is still limited to the act of prosecuting perpetrators against sexual violence against children not on Preventive or preventive efforts. The principle that a legal instrument must function as a tool of engineering, in the case of Law No. 35 of 2014 on child protection should focus on legal protection efforts not only limited to the action in the practical realm but has a concept that is able to formulate the problem fundamentally, Specific and practical aspects of all parties in the rule of law must be embodied, ranging from the smallest unit of family, the scope of education, Non government organization (NGO), local government and central.

4. Facilities and infrastructure

For facilities and infrastructure related to social life, unfortunately our government tends to ignore it. If the government provides adequate facilities for street children, children with economic limitations and mental retardation will certainly minimize the number of child discrimination and crimes committed by these children. The construction of schools is free of charge for disadvantaged children, the construction of shelter and protection homes for abandoned children and street children, as well as the provision of adequate health facilities as if they were just utopia, since the realization has been far from the above imagination.

The Indonesian Child Protection Commission is an independent state institution established under section 74 of Law No. 23 of 2002 on Child Protection. As a legal subject, children are the common domain of child protection legislation with the function of the Indonesian Child Protection Commission. As a state institution whose main duty and function is to focus on the problem of children. It is certainly necessary to get the attention forward, that one of the obstacles in the legal protection of the child in this context the child as a victim of sexual violence because in the Child protection legislation is not mentioned explicitly and decisively, the position and the specific role of state institutions that are given the authority to Is responsible for the fulfillment of legal protection as a right of the child, in this case the Indonesian Child Protection Commission.

In Article 69 A in which child victims of sexual crimes become the focal point of how the norms in the article have referred to preventive or preventive efforts in the handling of sexual crimes and rehabilitation efforts. There should be conformity or coherence of norms in the Child Protection law with other rules governing the same norms. Implementation rules that are in a lower or special position such as Minister of Social Affairs Regulation No. 9 of 2015 on Guidelines for Child Social Rehabilitation Against the Law by Social Welfare Implementing Institutions.

IV. Conclusions And Recommendations

That the legal protection of the child as a victim of sexual crime based on Law No. 35 year 2014 on Child Protection varies, starting from legal instrument or legal regulation which some of the norm content in article still bias and multitafsir and there is no coherence between each law and regulation. Invitations, obstacles to institutions or institutions relating to children there is no specific technical and specific implementation regulation in terms of how such positions and roles, and sanctions that are still classified as standards for enforcement efforts and repressive law protection. In order for the legal protection of children, especially children, as victims of sexual crimes to run effectively and efficiently, it is necessary to change the legislation in accordance with the existing legal requirements. Changes ranging from the affirmation of the still bias and multi-interpretation of the article, coherence with other specific implementation rules Or lower positions, affirmation of the position and role of institutions relating to the protection of children, as well as the imposition of strict sanctions for child sex offenders.

Reference

- [1]. Bagong Suyanto, ,2003, *Pekerja Anak dan Kelangsungan pendidikannya*, Airlangga University Press
- [2]. Bakhtiar, H.S., 2017. *Role of Law in Dealing with the Cyber Crime and Social Change*.
- [3]. Handar Subhandi Bakhtiar, 2015, *Penerapan Sanksi Pidana Dan Tindakan Terhadap Anak Menurut UU No.11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak*, Hukum Acara, Universitas Muslim Indonesia.
- [4]. Handar Subhandi. *Upaya Penanggulangan Kejahatan*. DOI10.13140/RG.2.2.29541.70882

- [5]. Handar Subhandi. *Pengertian Restorative Justice (Keadilan Restoratif)*. DOI:10.13140/RG.2.2.22830.82245
- [6]. Muladi dan Barda Nawawi Arief, 1992, *Bunga Rampai Hukum Pidana*, Alumni, Bandung,
- [7]. Moch. Faisal Salam, 2005, *Hukum Acara Peradilan Anak di Indonesia*, Mandar Maju, Bandung.
- [8]. Phillipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat Indonesia*, PT. Bina Ilmu, Surabaya.

Salmah Novita Ishaq Legal Protection of Children as Victims of Sexual Crimes by Law Number 35 of 2014 Of Child Protection. *International Journal of Humanities and Social Science Invention(IJHSSI)*, vol. 6, no. 11, 2017, pp. 09-12.