

Legal Protection Paradigm for Child Victims of Domestic Sexual Violence Crimes

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ABSTRACT

Victims as a party harmed by a crime are often neglected and do not even get attention, especially with the increasing attention to the coaching of inmates which is often interpreted as something unrelated to the fulfillment of the victim's interests, so it is not surprising that the attention to the victim is getting further away from the word protection. Protection of victims from a crime is very important to be considered and prioritized because the suffering of the victim due to a crime cannot be said to be completed or ended with the punishment of the perpetrator of the crime or the aftermath of the perpetrator of the crime serving the sentence given to him as a reward for the actions he committed. The main discussion in this study is about the paradigm of legal protection against children victims of domestic sexual violence crimes. The use of normative legal research in this study is done by examining library research that uses secondary data sources, both in the form of primary legal materials and secondary legal materials as well as tertiary legal materials. And this research is prescriptive analysis, which means that this study not only illustrates by analyzing a condition or symptom, both on the plains of positive and empirical law but also this research provides the proper arrangements and solves legal problems. The collected data is qualitatively analyzed in the form of systematic descriptions by explaining the relationship between the types of data and then analyzed descriptively so that conclusions can be drawn in this study. This study produced a conclusion that the paradigm of protection of children victims of domestic violence amendments is still focused on technical efforts, such as how to find more assertive methods of sentencing to

produce deterrent effects on perpetrators of crimes or prevent people from committing crimes, improving supporting facilities and infrastructure, increasing operational budgets. As a result, the focus of attention on victims of crime is often ignored while also the legal protection for children who are victims of domestic sexual violence is still partial and indirectly so that the benefits of legal protection cannot be felt by the child in a laboratory.

Keywords: Legal Protection Paradigm, Child, Victim of Crime, Domestic Sexual Violence

INTRODUCTION

One of the objectives of the establishment of the Republic of Indonesia is to protect all Indonesians. This goal should be interpreted as comprehensive protection for all citizens without exception. The objectives outlined in the opening of the Constitution of the Republic of Indonesia 1945 are further outlined in the articles contained in the torso of the Constitution of the Republic of Indonesia 1945, known as constitutional rights, among others: the right to justice, the right to protection and the right to freedom from threats, discrimination, and violence. Thus to implement this goal, the state must provide protection to all Indonesian citizens, especially children and vulnerable groups or victims of a crime.

Victims as a party harmed by a crime are often neglected and do not even get attention, especially with the increasing attention to the coaching of inmates which is often interpreted as something unrelated

to the fulfillment of the victim's interests, so it is not surprising that the attention to the victim is getting further away from the word protection. Protection of victims from a crime is very important to be considered and prioritized because the suffering of the victim due to a crime cannot be said to be completed or ended with the punishment of the perpetrator of the crime or the aftermath of the perpetrator of the crime serving the sentence given to him as a reward for the actions he committed.

The enforcement of justice and respect for human rights applies not only to the perpetrator but also to the victim. On this basis, criminal law should adjust the quality and quantity of suffering and harm suffered by victims as a result of a crime. ^[1] Sexual violence is often considered a criminal offence of decency alone. Whereas in the news that exists in both electronic media and print media many news facts show that the impact of sexual violence on the victim is very serious in the form of traumatic that may last a lifetime, even in some cases, sexual violence can encourage the victim to commit suicide. ^[2]

The view that sexual violence as a crime against decency is only supported by the state through the content in the Criminal Code (KUHP). In the Criminal War, sexual violence is considered a crime as well as a violation of the norms of decency. ^[3] This categorization not only reduces the degree of criminality committed, but also creates the view that sexual violence is a matter of morality alone. The association of sexual violence with the issue of morality causes the victim to be silenced and sometimes the victim is instead blamed for the violence he experienced. Besides, what the victim experienced was considered a disgrace, not only for him but also for his family and even his environment. Some of the victims were expelled from their homes and villages because they were deemed incapable of maintaining honor and damaging the names of their families and communities. The exclusion and stigmatization or self-decomputation of victims of sexual violence

can even take place even if the perpetrator is convicted by a court.

It is ironic to see this reality, whereas the state, the government is obliged to carry out the protection of children, ^[4] if the victim of a crime of sexual violence is a child. Victims of sexual violence show that sexual violence can destroy the integrity of a victim's entire life causing the victim to feel unable to move on with his life again. Be aware, sexual violence actually threatens the sustainability of the nation and the quality of future generations. Children with all their limitations make it vulnerable to being victims of crime, children who experience criminal acts resulting in the child becoming closed to the surrounding environment, fragile personal and apathetic. Although the Constitution of the Republic of Indonesia 1945 has emphasized the right to protection and the right to freedom from violence as one of the constitutional rights for all Indonesian citizens, children who are victims of domestic sexual violence crimes are still there.

The crime of domestic violence against children, this is like an iceberg climber "on the surface looks small but on a very large basis". Both children, mothers, and other family members cannot even have the will to report on the events that befell the child because it is considered a disgrace to the family, even more healthy when the mother, child and other families say because the perpetrator as the backbone of family who spends the family so that if the perpetrator is punished then the living to family will be stopped. So that the mother, child and other family members seem to be trying to cover up the actions that befell the child. There is no denying that Indonesia's national law has governed the protection of victims of crime, but the laws governing the protection of the law against victims of crimes that have existed so far are still partial that their existence is spread in various laws and regulations so that it only applies to certain crimes.

From the juridical aspect, there are three aspects that must be considered in

understanding the obstacles facing the victim, namely the aspect of substance, structure, and culture of law.^[5] At the substance level, despite the affirmation of the right to protection from violence and discrimination, various types of sexual violence have not been recognized by Indonesian law. As the Criminal Code (KUHP) only regulates sexual violence in the context of physical form and mere intercourse. At a structural level, law enforcement agencies began creating special units and procedures to deal with cases of child abuse, including forms of sexual violence stipulated in the law.

These laws enforcement units and procedures are not yet available at all levels of law enforcement and have not been supported by adequate facilities or victim handling perspectives. This shows that the state is still not optimally exercising its obligations to protect victims. The level of culture or culture of the law, there are still law enforcement officers who adopt the way society views on morality and sexual violence. As a result, the disclosure of the case shows no empathy in the victim's child, even tends to blame the victim. Questions such as what clothes to wear, where, what time, how to do it are some of the questions that law enforcement officials often ask when receiving reports of sexual cases. Such questions not only show the absence of a victim's perspective, but are also a form of judging the victim and making the victim (revictimize).

Especially if further reviewing the domestic violence sentencing law, if the perpetrator is proven to have committed a crime of sexual violence against a child then the perpetrator (parent) is sentenced to prison to account for his actions, then who else will give a living to the victim (child)?. In addition, if the perpetrator is subject to a penalty, then payment of the fine will be given to the state. The state (which in this case is represented by police and prosecutors) has a very dominant role towards criminal law as a legitimate representative of the community to defend

the public interest, has actually taken over the role of victims as a party suffering from a crime. The dominance of the role of the state is not followed by a clear legal arrangement regarding the legal relationship between victims of crime and the state. So any and however the actions or measures taken by the police and prosecutors, are considered as the steps and actions desired by the victims of such crimes.

The above description shows that it is appropriate for criminal law, should be reviewed and should look at the wider interests, not only focused on retaliation for the perpetrators of crimes, but also the interests of victims of crime should be considered.

METHODOLOGY

The type of research used is normative legal research conducted by examining library research that uses secondary data sources, both in the form of primary legal materials and secondary legal materials and tertiary legal materials.^[6] This research is prescriptive in analysis,^[7] which means that this study not only illustrates by analyzing a condition or symptom, both on positive and empirical legal plains but also providing proper arrangements and solving legal problems. To be able to provide an assessment of this research, the data collected using qualitative analysis methods.^[8] The data analyzed qualitatively will be presented in the form of a systematic description by explaining the relationship between the types of data as well as all the data selected and then analyzed deskritively so that some things can be drawn in conclusion in this study.^[9]

RESULT AND DISCUSSION

The law is always interpreted with regularity in the order of law as a consequence of the legal certainty of the provisions of the law that have been regulated. In addition, sometimes the law is seen as a reflection of a good society and even a civilized society so it is the law that must be considered earlier in human

civilization. Human with the thought that he always tries to analyze every event that happens even criminal acts. The approach to crime is carried out through the application of the law in the form of a criminal that has been determined in size. The desire for a legal paradigm for legal certainty is increasing, resulting in the creation of a state of law order as expected. The legal certainty desired by the community is sometimes able to defeat the other legal objectives in the form of the realization of justice in society.

Criminal law is also a highlight in the legal paradigm that sometimes seeks to abandon its basic purpose. ^[10] Acts of violence understood to be unlawful are only understood to be acts that violate the provisions of criminal law that have criminal sanctions. So the deterrent effect aspired by the purpose of criminal law enforcement cannot be realized because sometimes the perpetrator of the crime has an understanding that what is done is not a mistake only that the act is unacceptable to the criminal law. Failure by criminal law begins to show tangible signs when in practice there are various legal cases that are considered unlawful but have no material legal nature.

There are doubts about the stability of criminal law so that criminal law begins to be swayed by the emergence of the idea of re-mapping ranging from dogmatic order, legal theory to legal philosophy. The emergence of the assumption that a reality exists of regularity behind irregularities. ^[11] The principle considers that the law should be based on a relative measure in order to accommodate the needs of the community. The provisions of the law are too strict and clearly result in irregularities in the law considering the provisions of the law are abstract. Munir Fuady mentions the following post-modern legal paradigm: ^[12]

1. Legal authority is superior to positive law;
2. Enlightened theories of truth must be changed to "systemic" truths.

3. There is not a single uniformity of value in a culture. Culture is multiplicity and heterogeneous.
4. Methodology based on action.
5. Rationality criteria are heterogeneous/perspective (each subculture has its own perspective).
6. Creative justice is justice in an active society.
7. A functional category reformulation is required.
8. Judicial process that respects plurality.

These eight paradigms provide a major change to criminal law. So the setting of criminal law appears in its formulation to follow the values of the law that live and grow in society like the norm of *kesuslilaan*. Hatta positioned the norm of decency as a guideline in the association of life for people who come from a conscience that only has sanctions in the form of feelings of regret. ^[13] The emergence of such understandings opened up a place for law enforcement to explore and apply the legal values that live in a society that would directly impact the enforcement of certain legal provisions in law. That is, this criminal law paradigm offers not just an understanding of theory but synergy of theory with law enforcement. ^[14]

This is where post-modern law promises the value of usability to human and human interests. The impact of this paradigm flow can be seen from the rise of new thoughts in criminal law that put the interests of society first. The principle of legality that was originally understood only as a law or provision of the *sine lege* is understood materially into law in a written and unwritten sense (*sine ius*). The unlawful aspect also changed from the emphasis of the terms against the formal law emphasized more on the presence of *sitat* against the material law that appears from the presence or absence of harm from the victim or the malicious intent of the perpetrator. ^[15] Norms of decency that include sexual violence also have a very free place. The measure of violation of the norm of decency is no longer understood according to the

policy issued by the ruler in the formulation of the law but is already encompassing on the value of society. ^[16]

The criminal law in Indonesia that has been in force is still held closely as a basic guideline that should not be changed even if the thinking has no Indonesian cultural basis at all. The criminal law book still deified the principle of legality as the main basis of criminal law enforcement even though on the other hand has begun to recognize the legal values that live in society. This is evident in the regulatory arrangements of judicial powers that emphasize the obligation of judges to examine, dig, understand the laws that live in society. ^[17]

The purpose of judicial power is also affirmed as an effort to enforce law and justice based on Pancasila and the Constitution of 1945 so that the attention of law enforcement lies not in which provisions of the law are violated but the legal interests of what communities are harmed or threatened by criminal acts. Law enforcement is not only understood to enforce violated law provisions but develop laws in accordance with the development of society. ^[18] So that the moral aspect cannot be released from criminal law which is a source of understanding of law enforcement in accordance with the principle of the One True Godhead.

The placement of morality in a position outside of criminal law resulted in a difference in understanding of morality itself and then relativity emerged. This is where the inconsistency of Indonesia's criminal law development lies, on the one hand emphasizing legal positivism but the law enforcement aspect emphasizes the balance between changing society and prevailing legal norms. ^[19] The relationship of norms with the law as understood in legal theory in general, views the norm as a system of values underlying the enactment of the provisions of the law. It can be said that the existence of the provisions of the law depends heavily on how far and many norms are loaded. Marzuki explains the

nature of legal norms in terms of its purpose to regulate humans as social beings and outward aspects of man so that the existence of this norm of decency becomes the basis for the enactment of legal norms. ^[20]

The norms in criminal law are actually better known as principles or principles that are so fundamental and still abstract that they require concrete or tangible steps to implement them. It is the act of implementing this principle that is called the establishment of a provision of the law in a rule of law. ^[21] The act of setting the norm of decency into a written legal provision in a rule of law actually raises the level of applicability of the norm of decency into a legal norm, which in itself will make the norm of decency into a legal norm that governs and provides basic values of a general and broad nature. However, this will cause new problems again, given the large number of people in the Indonesian nation so that later the norms of gloency that will be enforced or used in the legal norms because for some people are very vasiari in appreciating the norms of decency. ^[22]

Based on the above understanding that the existence of norms depends heavily on how far the value is crystallized by society. But that doesn't mean understanding the value of eliminating the enactment of norms. The differences in the understanding of norms actually create a variation in people's recognition of a good life rather than indicating the absence of norms, called alternating movements between parts or elements and the whole so as to achieve a complete understanding. ^[23] This understanding becomes a basic understanding in understanding the importance of norms of decency for law enforcement who always ask whether or not any provisions of the law are violated by the perpetrators of crimes. Indeed, law enforcement must have a definitive reference in the form of a provision of the law that is used as a basis for adjudicating because if there is no definitive basis, law enforcement only charges powers that do not cover the possibility of misconduct. The

civility of norms for law enforcement is critical in the process of understanding in more depth with respect to the intent and purpose of the applicable law provisions and the matters at hand. [24] This indicates that in the process of law enforcement cannot be formulated as a combination of legal provisions and legal facts but also excavation of community values. [25] The success of law enforcement officials in bridging the intent of the law and legal facts in the law enforcement process is what the public aspires to uphold the protection of human rights justice. [26]

So Barda Nawawi Arief said that penal policy is very closely related to criminal policy, law enforcement policy to social policy. [27] Although the policy has differences in terms of implementation and in terms of its arrangements, it has the same goal of wanting social welfare. Related to the efforts to realize social welfare must certainly strive for the realization of protection and justice as the main ideals of criminal law. The provisions of the law are made in an effort to accommodate the ideal desires of society in the context of the whole, including morality. As part of community protection efforts, penal policy moves in a different realm of social policy from time to time and should be pursued as an integrated system. [28]

The legal policy in Indonesia that still uses some of the legal provisions of the Dutch Colonial government as contained in the Criminal Code (KUHP) which cannot be fully said to be a policy that is incompatible with the welfare policy of the people but should have been urged to do so the formulation of a criminal law policy again that prioritizes the values that live and grow in Indonesian society, thus penal policy will be in accordance with the ideals of the Indonesian nation.

CONCLUSION

Efforts to reduce the increase in crime, (both in quality and quantity) so far the focus of attention is only focused on technical efforts, such as how to find a more

assertive method of imposing sanctions in order to produce a deterrent effect on criminals or prevent people from committing crimes, improving supporting facilities and infrastructure, increasing operational budgets. As a result, the focus of attention on victims of crime is often ignored when in some cases in criminal acts the victim plays an important role in the disclosure of the case.

The victim's position seems to have been discriminated against by criminal law, whereas in the context of a criminal act, the victim is essentially the most disadvantaged party. The view that a victim of a crime only acts as a supporting or complementary instrument in the disclosure of material truth, for example when the victim is positioned only as a witness in a criminal case, it is time to be left behind. Similarly, the view that the perpetrators have been convicted of crimes is sufficient to obtain legal protection.

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