
LEGAL PROTECTION FOR CHILDREN WHO ARE VICTIMS OF THE CRIME OF RAPE

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ABSTRACT

Children as members of the younger generation are a substitute for the country's independence aspirations and the potential for human resources for the founding of the country. Recently, sexual crimes against children have often occurred and the worst scenario is that sexual violence crimes now not only occur against adults but also children. Legal protection is the most important element in a legal state, because legal protection is the right of every citizen and the obligation of the state as the organizer of protection. Applying normative juridical research methods, how to analyze library materials, namely primary and secondary legal materials. The threat to perpetrators of this rape, according to the criminal code regarding the crime of rape, is a maximum of 15 years. In fact, many perpetrators of rape do not receive the maximum sentence. Meanwhile, the victims have to carry stories of humiliation and psychological trauma for the rest of their lives. It's not fair. It is recommended that law enforcement officials protect children targeted for rape by safeguarding the victims' rights, so that the victims receive permanent mental and social rehabilitation. Request the government to provide facilities and infrastructure for the rehabilitation of child rape victims, so that the victims can continue their lives in the future. Suggestions for the community to help child victims of violence (rape) to be protected by law, so that Indonesia becomes a prosperous country for human-based welfare of the population.

Keywords: Rape, Children, Crime.

INTRODUCTION

Children as members of the younger generation are a substitute for the country's independence aspirations and the potential for human resources for the founding of the country. Therefore, in the series of providing quality human resources who are able to lead and protect the unity and unity of the nation of the Republic of Indonesia based on Pancasila and Constitution 45, ongoing training and development is needed for the continuation of life, growth and physical, mental, social and protection. From all opportunities that are detrimental to children, young people and also the earth in the future. Child care is a series of activities that aim to support and maintain children and their authority so that children can live, grow, develop, and function optimally by respecting their status and dignity, and are protected by cruelty from differentiation.¹

Recently, sexual crimes against children have often occurred and the worst scenario is that sexual violence crimes now not only occur against adults but also children. Children here are children who are under 18 years of age or not yet 18 years of age based on the Child Protection Law. The incidence of this crime continues to increase in various operating styles. In the case of child rape, this is a very urgent obscene crime, psychologically affecting the victim, so this crime needs to be handled seriously. The immediate environment, for example the family, must play a role in safeguarding the welfare and protection of children. The presence of a family must be able to protect, provide love and love as a peaceful and harmonious family union for growth and development. Child protection is regulated in Law

¹ Pasal 1 ayat 2 Nomor 23 Tahun 2002 Tentang Perlindungan Anak

Number 35 of 2014 concerning modifications to Law Number 23 of 2002 concerning Child Protection.²

Rape is a very barbaric, immoral, despicable crime that violates the norm that the victims are women, adults and minors. This situation is very miserable for a woman when her dignity and honor are at stake. Based on women's cases, violations of women's rights and rape are interpreted as prohibited acts³

Rapists must be punished severely, causing a deterrent effect on rapists. There must be legal norms that regulate punishments that are not light for rapists, apart from that, clarity is also needed by law enforcement officials when applying these penalties as well. Rape is clearly regulated in Articles 285 and 286 of the Criminal Code (KUHP).

Legal protection for child victims of rape is the best model for upholding justice. Criminal acts that cause misery to the victim, not only causing physical misery but also mental and psychological suffering, must be subject to the observation of law enforcement officers. Criminal acts that cause a lot of misery for the victim, for example rape, must be punished as severely as possible, even though there must be additional punishment for the perpetrator. Rape victims must obtain justice, both from a legal perspective and also from an emotional and psychological rehabilitation perspective. Moreover, rape victims are children. There must be maximum legal protection followed by severe punishment, in order to establish the values of justice and the presence of children who must be cared for, their rights respected and children's behavior respected in a non-discriminatory manner.

Legal protection is the most important element in a legal state, because legal protection is the right of every citizen and the obligation of the state as the organizer of protection. The state provides protection by regulating it in various laws, one of which is contained in Article 76D of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection which states "Everyone is prohibited from committing violence or threats of violence forcing children have sexual intercourse with him or another person."⁴

With this regulation, the state provides a form of protection for the perpetrator of rape whose rape victim is a child by increasing the threat of punishment for the perpetrator of rape, as stated in Article 81 paragraphs (1) and (2) of Law Number 35 of 2014 regarding amendments to Law Number 23 of 2002 concerning Child Protection which states:

- Any person who violates the provisions as intended in article 76D will be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).
- The criminal provisions as intended in paragraph (1) also apply to every person who deliberately commits deception, a series of lies, or persuades a child to have sexual intercourse with him or another person.⁵

Meanwhile, in the case of our country, Indonesia, the number of rapes that have occurred to minor victims has been quite good. In recent rape cases, many minors have been hit and they are not aware of what has just happened to them.

The crime of rape in the Criminal Code is regulated in Article 285 which states that "Anyone who, by force or threat of violence, forces a woman who is not his wife to have sexual intercourse with him, shall be punished for rape with a maximum prison sentence of twelve years." Article 285 of the Criminal Code can be concluded that (a) the rape victim must be a woman without age limit; (b) the victim must have experienced violence or threats of violence. An important aspect in this crime is proof that under a

² Angger Sigit Pramukti, *Sistem Peradilan Pidana Anak*, Pustaka Yudisia, Yogyakarta, 2015, hal. 81

³ Achie Sudiarti Luhulima. *Pemahaman Bentuk-bentuk Tindak Kekerasan Terhadap Perempuan dan Alternatif Pemecahannya*. (Bandung: Alumni. 2000), hal. 1

⁴ Mulyana W. Kusuma, *Aneka Permasalahan Dalam Ruang Lingkup Kriminologi*, (Bandung: Alumni, 1981), hal.109

⁵ Pasal 81 ayat (1) dan (2) Undang-Undang Nomor 35 Tahun 2014 tentang perubahan atas Undang-Undang Nomor 23 tahun 2002 tentang Perlindungan Anak

certain age, a child who is a victim of a rape crime must be protected by law.

The crime of rape is generally regulated in Article 286 of the Criminal Code, which states that "Anyone who has sexual intercourse with a woman outside of marriage, even though it is known that the woman is unconscious or helpless, is threatened with imprisonment for a maximum of nine years."

Children are an integral part of human life and the survival of a nation. With the important role of children, children's rights are clearly enshrined in the constitution, the state guarantees that every child has the right to live, grow and develop and has the right to protection from violence and discrimination.

The best interests of the child must be internalized, as are the best interests of human existence. Therefore, we all strive to ensure that children do not become victims of violence, or become victims of crime or other reprehensible behavior.

RESEARCH METHODS

This article applies normative juridical research methods, how to analyze library materials, namely primary and secondary legal materials.⁶The data collection technique uses library research, by collecting data and information or legal materials related to the substance of the research. After the legal materials are collected, analysis is carried out and appropriate conclusions are drawn regarding the problems contained in the problem formulation. This writing also applies data analysis techniques with deductive logic. This conclusion is based on a literature analysis regarding the rules that explain the chapter on rape of minors. This brand dispute will be analyzed according to existing regulations, from a brand law perspective in order to understand its essence and intent in resolving the legal problems discussed in this research.

RESULTS AND DISCUSSION

Criminal sanctions for the crime of raping minors

The issue of women being raped is an example of the low position of women in relation to men's sexual interests. The sexual image of women who see themselves as men's sexual objects has a deep meaning. In everyday life, women often face violence, coercion, and physical and psychological torture. Thus, rape not only reflects the image of women as sexual objects, but also as objects of male power.⁷

The views of women's rights defenders claim that women have long been placed in a low and marginalized position in society. Women are not only subject to men's sexual gratification and always familiar with all forms of violence, but are also considered vulnerable, always subject to men's control, exploitation and enslavement.

Such a view may refer to the many phenomena that show men increasingly committing violent crimes, which are common in this society and it is rare to find women as perpetrators of violent crimes against women along with men. Women occupy the lower strata because of the superior behavior displayed by the agile and arrogant men who display their physical prowess. Windhu also commented that "Violence (against women) is a characteristic or condition that contains power, pressure and coercion. Violence is related to coercion, which means strong pressure. Violence is also often associated with rape, namely coercion and violence."⁸Rape criminal cases are the most difficult cases to resolve both at the investigation, prosecution and decision-making stages. Apart from difficulties in the upper limit, there are also difficulties in proof, as rape or obscene acts are often committed without the presence of another person.

⁶ Khudzaifah Dimiyati & Kelik Wardiono, 2004, *Metode Penelitian Hukum*, Surakarta:Fakultas Hukum UMS, hal. 4.

⁷ Dadang S. Anshari (et.al.), *Discussing Feminism, Muslim Women's Reflections on the Social Role of Women*, Pustaka Hidayah, Bandung, 1997, p. 74.

⁸ Haedar Nashir, *Religion and the Modern Humanitarian Crisis*, Student library, Yogyakarta, 1997, p. 64.

Even though many rape crimes have been handled by the Court, the perpetrators of these cases have not been sentenced to the maximum sentence in accordance with the provisions of the Criminal Code (KUHP) CHAPTER XIV concerning crimes committed by moral violations (articles 281 to 296), in particular the rape section (article 285) regulates:

"Anyone who, by force or threat of violence, forces a woman to have sexual intercourse with him outside of marriage, is threatened with rape, with a maximum prison sentence of twelve years."

Sudarto is of the opinion (as quoted by Barda Nawawi Arief in his book Anthology of Criminal Law Policy) that overcoming crime requires rational efforts from society, including through criminal policy. Crime prevention policies or efforts are essentially an integral part of efforts to protect society. Therefore, it can be said that the main goal of criminal policy is "protection of society to ensure general welfare".

The reason why rape cases are not reported by victims to law enforcement officials to be handled by the courts is because of several factors, including the victim's shame and reluctance to reveal the shame caused by other people, other people knowing, or the victim being afraid because the attacker threatened to kill you. if you report the incident to the police. This of course affects the mental/psychological development of victims and also influences the law enforcement process itself to create a sense of justice for victims and society.

If The formulation of Article 287 paragraph 1 is detailed, there are elements as follows following:

- Objective Aspect
 1. His actions; Sexual intercourse is rape of a child that occurs due to sexual intercourse that occurs either without the victim's intention or within the victim's personal intention. Basically, like-mindedness will not be punished unless the child knows that the perpetrator has a partner and then the child can be punished under 284 of the Criminal Code.
 2. The object is with a woman outside of marriage.
 3. Not yet 15 years old.

The measure that children cannot overcome is the physical and mental aspects. The physical aspect is seen in the face and body of the child. Meanwhile, the mental aspect can be seen in his behavior.

- Subjective Aspect

It is necessary to assume that he is not yet 15 years old. In this crime case, the aspect of error is designed in the form of: intentionality, that is knowing that she is not yet 15 years old and negligence that it is mandatory to assume that she is not yet 15 years old or that her age is not yet clear, so it is not yet time for her to get married. The criminal threat of raping minors is the Child Protection Law Number 23 in article 81 (2).

The threat to perpetrators of this rape, according to the criminal code regarding the crime of rape, is a maximum of 15 years. In fact, many perpetrators of rape do not receive the maximum sentence. Meanwhile, the victims must carry stories of humiliation and psychological trauma for the rest of their lives. Unfair. Therefore, the author believes that the threat of punishment in the Criminal Code is not in line with the meaning of justice for the people. The DPR must take steps to change the provisions of the Criminal Code regarding rape.

Minimum and maximum sentences of life imprisonment should be applied to rapists. Some even demanded the death penalty. Severe punishment serves to deter rapists and warn people never to commit crimes. Apart from the problem of law enforcement and harsh penalties, procedures for reporting rape victims must be implemented properly so that society is better protected. The government also feels it must create a traumatic center, at least at the district level, where psychological support and counseling can be provided to rape victims. Psychological trauma will leave scars for life.

Legal protection efforts for children who are victims of rape

The criminal act of rape can be categorized as a form of crime, because usually this criminal act is followed by threats of violence. Referring to Soerjono Soekanto which was taken from Mulyana W.

Kusuma, the causes of violent crime are:

- There is an orientation towards objects that creates a desire to obtain material the easy way.
- There is no channeling of will and there is a kind of mental pressure on a person.
- Courage to take risks.
- Lack of feelings of guilt and poor role models.

In order to protect victims of criminal acts, an organization must be created which is specifically related to them. Adequate information must be provided in advance about the rights of victims and their families, should they suffer future harm or suffering as a result of crimes committed against them.

Ways that can be used to provide legal protection to child victims of criminal acts of rape are:

- Rehabilitation efforts, whether in institutions or outside institutions;
- Efforts to protect against identity reporting through mass media and to avoid labeling;
- Providing safety guarantees for victim witnesses and expert witnesses, whether physical, mental or social
- Delegation of transparency to obtain information about the progress of the case.

The Law on the Protection of Child Rape Victims stipulates that child victims of criminal acts have the right to be rehabilitated by the government both physically and mentally, psychologically and socially. The government's dependents and child victims are always obliged to understand the developments in the cases they are facing. It also includes the right to be notified when the offender is acquitted or released from prison (if found guilty). If they are not punished, for example because there is not enough evidence, then the victim must be protected so that the perpetrator does not retaliate in any way. They must coordinate with the police so that when they receive reports of violence against women, they must immediately ask for help. These organizations must at least be supported by social workers, psychiatrists, lawyers and medical personnel. If this cannot be done, efforts should be made to align qualified persons as closely as possible with the above experts, so that the organization can reasonably achieve the envisaged physical objectives. Adequate funding for this organization must come from the government itself, whether central or regional, and of course can involve the local environment, both individuals and groups.

CONCLUSION AND SUGGESTION

The rights of rape victims other than criminal law are regulated in Law Number 31 of the Republic of Indonesia of 2014 as after being modified by Law Number 13 of 2006 concerning Protection of Witnesses and Victims as stated in Article 6 paragraph (1) and Article 7A paragraph (1). Meanwhile, legal protection for victims of criminal acts of rape in Indonesia, starting from the investigation, prosecution and trial stages, has been provided to victims of criminal acts of rape. However, other forms of legal protection, such as obtaining a new identity, receiving reimbursement for travel expenses if necessary, participating in the selection and identification process, and security assistance, etc., are almost never provided to rape victims.

Efforts that can be made to provide legal protection to the object of rape are:

Recovery methods, both internal and former organizations, which function to prevent media disclosure and avoid labeling, provide security protection for victim witnesses and expert witnesses, physically, mentally and socially as well as providing access to information relevant to the progress of the case.

It is recommended that law enforcement officials protect children targeted for rape by safeguarding the victims' rights, so that the victims receive permanent mental and social rehabilitation. Request the government to provide facilities and infrastructure for the rehabilitation of child rape victims, so that the victims can continue their lives in the future. Suggestions for the community to help child victims of violence (rape) to be protected by law, so that Indonesia becomes a prosperous country for human-based welfare of the population.

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