

LEGAL PROTECTION OF CHILDREN AS VICTIMS OF PEDOFILIA IN INDONESIA

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Children as pedophilia victims need to get legal protection, this research aims to know the legal protection of pedophilia victim based on Law Number 35 Year 2014 about Children Protection, weakness in execution of legal protection to children as pedophilia victim, and ideal concept to legal protection of child pedophilia victim based on Law Number 35 Year 2014 on Child Protection. The method used was the sociological juridical approach. The sources of data research were primary and secondary data. Primary data were obtained by conducting free, guided interviews. The respondents were gained by using non random sampling technique; they were members of non-governmental organizations that handle pedophilia victims and judges who handle pedophilia cases. The data obtained were analyzed by qualitative method.

The results of the normative pedophile casualty protection research are set out in Law No.35 of 2014 on Children Protection, Article 15 letter f. Every child has the right to be protected from sexual crimes, and in Article 20, the state, government, local government, community, family, and parent or guardian shall be responsible for the organization of children protection. However, the rights of the victims in the implementation of the criminal justice process are still neglected, the victim as the injured party only functioned as an object of proof, the importance of expert assistance and other rights are often ignored. The weakness of legal protection against the victims is the absence of sanctions or restitution and in the implementation of the judiciary is more oriented to offender. The existence of victims is subordinated and eliminated as risk secondary victimizations in the work of criminal justice. The ideal conception of Law No. 35 of 2014 requires the addition of sanctions for redress or restitution, and the role of family, government, community and non-governmental organizations to protect child victims of pedophilia.

Key word: Legal Protection, Children, victims, Pedophilia

INTRODUCTION

The child is an integral part of human survival and the sustainability of a nation and state. In the Indonesian constitution the child has a strategic role, it is expressly stated that the state guarantees every child has right to survival, growth and development and it is entitled to protection from violence and discrimination. Therefore, the best interests for children should be respected as the best interests for the survival of mankind. The consequences of the provisions of Article 28B of the 1945 Constitution of the State of the Republic of Indonesia need to be followed up by establishing government policies aimed at protecting children¹.

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According to data collected by data centers and information of the National Commission for Child Protection of Indonesia from 2010 to 2014, there were 21,869,797 cases of violations of child rights spread across 34 provinces and 179 districts and cities. 42-58% of violations of children's rights are sexual crimes against children, the rest are cases of physical abuse and neglect of children. The data and victims of sexual crimes against children increase each year. In 2010 there were 2,046 cases, of which 42 percent were sexual crimes. In 2011 there were 2,426 cases (58 percent of sexual crimes) and in 2012 there were 2,637 cases (62 percent of sexual crimes). In 2013 there were considerable increases of 3,339 cases with sexual crimes by 62 percent, while in 2014 from January to April there were 600 cases or 876 victims of which 137 cases were child perpetrators².

The Indonesian Child Protection Commission also found many complaints of child abuse in 2014. From 171 complaints, there were 67.8 percent related to cases of violence and the most frequent cases of violence were cases of sexual violence about to 45.7 percent (53 cases). The National Commission for Child Protection records the highest number of child crimes since 2012 is sexual crimes by adults against children and the perpetrators are usually school teachers, private teachers including religion teachers and private drivers³.

In Indonesia legislation related children is needed because it is a preventive and repressive protection for children and in the form of protection that is abstract (indirect) or concrete (direct).⁴

Child law has been spread in various areas of law or regulation, for example in Article 68 and Article 69 of Law No.13 of 2003 on Manpower, Law No.4 Year 1979 on Child Welfare. Legislation no. 35 of 2014 on Amendment to Law no. 23 of 2002 on Child Protection, Article 52 paragraph (2) of Law No.39 of 1999 on Human Rights, Law no. 11 of 2012 on the Criminal Justice System of the Child, the Criminal Code (KUHP) only covers 3 articles, namely Articles 45, 46, and 47, while the Criminal Procedure Code only provides very little mention of the Child Article 153 paragraph (3), Article 153 paragraph (5), Article 171 sub a Criminal Procedure Code. Article 2 of Law No.4 Year 1979 regarding Child Welfare.

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 the honor and human dignity, and get physical and psychological protection so that the child is protected both mental and spiritual as expected by society and government. It is therefore necessary to conduct legal protection research on child victims of pedophilia crime based on Law Number 35 Year 2014 on Amendment to Law Number 23 Year 2002 regarding Child Protection.

PROBLEM FORMULATION

1. How is the implementation of legal protection against child victims of pedophilia crime based on Law Number 35 Year 2014 on Child Protection?

2. How is the weakness of the implementation of legal protection against child victims of pedophilia crime based on Law Number 35 Year 2014 on Child Protection?
3. What is the ideal concept of legal protection for child victims of pedophilia crime based on Law Number 35 Year 2014 on Child Protection?

RESEARCH METHODS

The method used was sociological juridical approach. The data used were primary and secondary data. Primary data was obtained by conducting guided free interviews with the respondents. The respondents were chosen by using non-random sampling. There were members of KJHAM Sekartadji non-governmental organizations that handle pedophile victims and judges handling cases. The data obtained were analyzed by qualitative method.

RESULTS AND DISCUSSIONS

1. Legal Protection Against Children Victims of Pedophilia Crime Under Law No. 35 of 2014 Child Protection

Article 15 Sub-Article f of Law Number 35 Year 2014 on Child Protection states that every child has the right to protection from sexual crimes, and Article 20 that the state, government, local government, community, family, and parent or guardian are obliged and accountable answer to the implementation of child protection. There are Article 1 number 17, 18, 13, 3, 4, 5 Law Number 35 Year 2014 on Child Protection.

The understanding of pedophilia is a sexual deviation in which adults (male or female) seek sexual satisfaction with young children (preteens). Pedophilia is a sexual activity involving small children, generally less than 13 years old. Patients with pedophilia are over 18 years old and at least five years older than the child. Individuals with this disorder may be attracted to boys, girls or both, although incidents of pedophilia activity are almost twice as likely to be repeated by men who are attracted to men. Individuals with this disorder develop procedures and strategies to gain access and trust from children.

Pedophilia is a psychiatric illness that can make the offender abolished his criminal fault for forgiving reasons. The excuse of forgiveness is the reason that removes the fault of the offender, while his actions remain against the law. Thus, the excuse is seen from the side of the person/perpetrator (subjective). For example, because the perpetrator is insane or mad that cannot account for his actions, as set forth in Article 44 of the Criminal Code.

According to R. Soesilo because the defendant cannot be punished because his deeds cannot be accounted for him is because⁵:

- a) Less perfect sense, what is meant by the word “mind” here is the power of mind, and intelligence of the mind. People can be considered less than perfect, for example: idiots, imbeciles, blind-deaf, and mute, but these people are not sick, but because of their birth defects, the mind remains as a child.
- b) Pain changes the mind, which can be included in this sense for example: crazy, hysteria (a type of neurological disease especially in women), epilepsy, and various other mental illnesses.

With regard to the mental condition of the accused, according to R Soesilo, the judge is in charge of deciding whether or not the defendant is accountable for his actions even though he may also seek advice from a psychiatrist. If the judge is of the opinion that the person is not accountable for his actions, then the person is released from all criminal charges (*ontslag van alle rechtsvervolgin*). However, in order to prevent the endangers both the safety of the madman and the public, the judge may order that person to be admitted to a mental hospital for a maximum period of one year to be protected and examined.

In the Criminal Code, an act known as pedophilia is an obscene act committed by an adult to an underage person. In the past, prior to the enactment of Law Number 23 Year 2002 regarding Children Protection and then Law Number 35 Year 2014 on Amendment to Law Number 23 Year 2002 regarding Children Protection, obscene acts, including minors, is regulated in Article 290 of the Penal Code, whereas, the criminal penalty for a person who commits lewd acts with a child of the same gender as the offender, is governed by Article 292 of the Criminal Code.

Since the enactment of the Children Protection Act, which is the government’s move to increase children protection, the criminal act of obscene acts against children is more specific and protects the interests of the children. Under the Children Protection Act, a person is categorized as a child if he/she is not yet 18 (Article 1 number 1 of Law No. 35 of 2014 on Amendment to Law No. 23 of 2002 on Child Protection).

The provisions on child abuse are contained in Article 76D, Article 76E, Article 81 and Article 82 of Law Number 35 Year 2014 on Amendment to Law Number 23 Year 2002 regarding Children Protection.

Essentially, the protection of victims as legal promises by the criminal justice system seeks to realize the primary function of the law as disclosed by I. S. Susanto in three respects: ⁶Protection, Justice and Development.

The position of victims in criminal justice as a justice seeker has been neglected. When examined from the purpose of criminal punishment in positive criminal law, offenders receive more attention such as rehabilitation, treatment of offenders, social re-adaptation, socializes, and others. This is a form of injustice for the victim, because as an aggrieved party only functioned as a means of proof, and not

infrequently the rights of victims are neglected. The work of criminal justice both in institutions and legal institutions is more oriented to offenders oriented. The existence of victims is subordinated and eliminated as risk secondary victimizations in the work of criminal justice.

In analyzing the facts of the work of the above law enforcers, especially in the protection of victims, it can be examined using La Patra's view of the ability of criminal justice to complete the list of works⁷:

- a) Make sure that the defendant is not neglected to be represented effectively
- b) Make sure that the people are not neglected to be represented effectively
- c) Create favorable conditions toward fair judgment and reasoning
- d) Allows processing of a case with measurable speed
- e) Reduce to a minimum the load on the shoulders of the litigants
- f) Reduce to a minimum the burden of the other party
- g) Reduce to a minimum case fee.

Based on the researcher's interview with one of the judges at the Semarang District Court, Winarno stated that from the criminal justice system the child has accommodated the child's interest as the victim which in Article 18, Article 22, Article 23, Article 26, Article 27 paragraph (3), Article 53, Article 55, Article 56, Article 58, Article 60 Paragraph (3), Article 61 Paragraph (2), Article 90 Paragraph (1) of Law Number 11 Year 2012 About The Child Criminal Justice System⁸. Meanwhile, special protection for child victims of crime is implemented through:

1. Rehabilitation efforts, both within institutions and outside institutions;
2. Efforts of protection from identity coverage through mass media and to avoid labeling;
3. Providing safety assurance for witnesses of victims and expert witnesses, whether physical, mental, or social; and
4. Providing accessibility to obtain information on case development.

Personnel or parties involved in a criminal proceeding in a district court consist of Judge/Panel of Judges, Public Prosecutor, Legal Counsel, Substitute Registrar / Clerk, Defendant, Witness/Expert⁹.

2. Disadvantages of the Implementation of Legal Protection Against Children Victims of Pedophilia Crime Under Law No. 35 of 2014 on Children Protection

An important part of the penal system is to set a sanction. Its existence will provide direction and consideration of what should be used as sanctions in a crime to enforce norms. On the other hand, punishment itself is the most complex process in the criminal justice system because it involves many different people and institutions.

In the judicial process the judge gave his decision on the following matters:

1. Decision on the event, whether the defendant has committed the deed charged to him, and then
2. Decision on the law, whether the act committed by the defendant is a crime and whether the defendant is guilty and can be convicted, and finally
3. The decision on his criminal sanction, if the defendant can indeed be convicted.

Implementation of the legal protection of children as victims of pedophilia in the criminal justice process was not done optimally. According to Winarno¹⁰, the judge in deciding the perpetrators of crime is based on applicable legislation. In the case of deciding cases of pedophilia whose child victims are still punished by imprisonment because the compensation sanction is not regulated in the law. It, thus, makes the child as a victim is not compensated for the suffering experienced. Because in the Act. No.35 year 2014 sanctions to the perpetrator are a prison and a fine not compensation. Since the Indonesian criminal law system adheres to the principle of formal legality, criminal judgments that can be imposed by a judge are only those contained in the law.

It is true that the Judge may establish or discover law when the law is incomplete or unclear to decide a case, but in the Criminal Code (KUHP) as the source of criminal law has clearly specified the types of criminal, Article 10 criminal code. Therefore, the judge in the imposition of a criminal cannot be separated from Article 10 of the Criminal Code, hence, the compensation and rehabilitation for child victims of crime pedophilia can claim compensation basically can be done through three ways: first through the merger of damages, the second through the action against the action law and the third through the application of restitution.

Another mechanism available is to use ordinary civil lawsuits with a lawsuit model. In this lawsuit, the plaintiff, in this case the victim of a criminal offense will have to wait for a court decision that has adjudicated the criminal case committed by the offender in this case the defendant.

While there is also another mechanism that is to apply for restitution filed under the provisions of Law No. 13 of 2006 on Protection of witnesses and Victims. PP no. No. 44/2008 on Compensation, Restitution and Assistance to Witnesses and Victims, and LPSK Regulation no. 1 of 2010 on Standard Operating Procedures for Application and Restitution Implementation. The application for restitution is regulated in Article 7 paragraph (1) letter b jo Article and paragraph (2) of Law Number 13 Year 2006 concerning Protection of Witness and Victim. Decisions on compensation and restitution are given by the courts, which are then more detailed in PP. 44 of 2008.

In the case of criminal damages for children victims of pedophilia crime does not exist but with the verdict can be a way to prosecute through civil lane. Regarding

the sense of justice received from the victim, of course, if the legal needs of the parties is fulfilled.

From the interview on 9 March 2016 with KJHAM SEKARTAJI¹¹, which is an organization engaged in the protection of women and children victims of sexual violence, in this case represented by Dian as a companion who accompanied child victims of sexual violence. In an interview expressed his disappointment in the process of hearing a child as a victim of sexual violence does not meet Article 22, Article 23, Article 27 paragraph (3), Article 55, Article 58, Article 61 paragraph (2) Law Number 11 Year 2012 on Children Judicial System.

Investigators, Public Prosecutors, Judges, and other officers in examining children's cases, the victim's children still use/wear a toga or official attribute. In the examination is not asked for psychological records of children who became victims of sexual crimes. The victim's child is not tried in a special courtroom of children. The court's waiting room is not separated from the adult's court waiting room. The trial time of the child does not take precedence from the adult, the scheduling of the trial does not match the given schedule, which is the schedule of the hearing given morning but the field ends in the afternoon of the new trial was held. In the hearing, the judge is obliged to order the parent / guardian or assistant to assist the victim's child but in fact the judge rejects the existence of a companion for reasons of inconvenience and the smoothness of the hearing. In Article 55 of Law Number 11 Year 2012 on the Juvenile Justice System which can make the trial null and void is the absence of Advocates or other legal aid providers and/or the Community Guidance, the absence of a parent/guardian or a companion will not cancel the hearing but of course the child of the victim who is in recovery period both physically and mentally surely needs the person whom he believes to be near at the time of the hearing.

Evidence in the trial such as the question of a judge who asks a criminal offense when viewed psychologically can make the trauma of child victims of crime again remembered while the judge can see from the victim's visum (physical test result).

3. Ideal Concept on the Implementation of Legal Protection of Child Victims of Pedophilia Crime in Law No. 35 of 2014 on Children Protection

Based on the concept of comprehensive child, it is certainly the ideal concept for the legal protection of child victims of pedophilia crime based on Law Number 35 Year 2014 on Children Protection which puts the obligation to provide protection to the child based on the principles that accommodate the implementation protection for children namely; Non-discrimination that does not distinguish, restrict or exclude children, either directly or indirectly based on religion, ethnicity, race, social status, economic status, culture or gender that may affect the fulfillment and protection of the rights of the child.

All the actions done by the government, community, legislative and judicative broad are focusing on the children's interest. The children shall be placed in the primary consideration. The right to life, survival and development which emphasizes that every child has the right to live safely, peacefully, peacefully, happily, prosperously, mentally and entitled to the fulfillment of their basic needs for proper growth and development, and the right to live standard which is appropriate for the physical, mental, spiritual, moral and social development which must be fulfilled by the parties mentioned in Law Number 35 Year 2009 concerning the Amendment of Law Number 23 Year 2002 on Children Protection. The parties are parent, society and government.

In general, child protection efforts can be divided into direct and indirect protection. Direct protection measures such as the provision of something for the child to be protected and saved from harm, the prevention of everything that could harm or sacrifice the child. The supervision, guarding of the inner or outer self, coaching (mental, physical, social), the socialization of formal and informal education, care, reward, regulation in legislation. Indirect safeguards include the prevention of harm to others, the sacrifice of the interests of the child through legislation, the promotion of appropriate understanding of the child and the rights and obligations, counseling on child and family development, the provision of something that benefits the child, mental, physical, social) of participants other than the child concerned in the exercise of child protection, their act of deterring the protection of the child.

The two child protection efforts (direct and indirect) appear to be the same in terms of protection measures. The difference between the two lies in the object of protection itself. Objects in direct protection efforts of course are children directly. On the other hand, indirect protection efforts more concern on the participants who are related and concerned to the protection of children that is family, community, and government. These efforts are more of an integral endeavor, since the implementation of child protection should be successful, thus, relevant participants such as family, community and government are firstly nurtured and mentored and provided with an understanding of how to protect children well.

As contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of power (United Nations General Assembly Resolution Number 40/34 of 29 November 1985). The declaration contains provisions¹².

According to the above declaration, it is part of the child's right as a victim to be fulfilled. Therefore, in the legal protection of the child as a victim is part of the protection of the community, it can be manifested in various forms, such as giving restitution or compensation, medical services, legal aid and rehabilitation.

Viewed from the interests of the victim, the concept of compensation consists of two benefits, namely, first to meet material losses and all costs incurred, and

second is the emotional formulation of the victim. While viewed from the side of the perpetrator's interests, the obligation to replace the loss is seen as a criminal form that is dropped and perceived as a concrete and directly related to the mistakes made by the perpetrator.

CONCLUSIONS

Based on the discussion contained in the previous chapter and the results of research obtained by the researcher, the researcher gives the following conclusions:

1. Legal protection of children is regulated in Law No. 35 of 2014 on Child Protection, Article 15 letter f that every child has the right to be protected from sexual crimes, and in Article 20 that state, government, local government, community, family, and the parent or guardian shall be responsible for the organization of child protection. However, the rights of the victims in the implementation of the criminal justice process are still neglected, the victim as the injured party is only functioned as an object of proof, the importance of expert assistance and other rights is still often ignored, because the criminal justice system in Indonesia prioritizes attention to the perpetrators.
2. The weakness of the implementation of legal protection against child victims of pedophilia is the absence of rules on sanctions compensation for victims in the law No.35 / 2014 on Child Protection. And in the process of criminal prosecution is not based on psychological records of children who are victims of sexual crimes. The victim's child is not tried in a special courtroom of children. The court waiting room is not separated from the adult courtroom. The trial time of the child does not take precedence from the adult, the scheduling of the trial does not match the given schedule, which is the schedule of the hearing given morning but the hearing is finally held in the afternoon, but in fact the hearing is held in the evening.
3. The ideal concept for the legal protection of child victims of pedophilia crime in Law No. 35 of 2014 needs additional sanction of compensation or restitution for the victim, in concept of compensation consists of two benefits that is, first to meet the material losses and all expenses incurred , and the second is the emotional formulation of the victim. While viewed from the side of the perpetrator's interests, the obligation to replace the loss is seen as a criminal form that is dropped and perceived as a concrete and directly related to the mistakes made by the perpetrator. In addition it needs the role of family, community, government to realize the protection of child victims of pedophilia.

SUGGESTIONS

1. Government; Need to regulate the compensation for the victims of pedophilia crime, the draft of the Criminal Code draft gives its place/status to the criminal damages, namely as one additional criminal type. Although it is an additional criminal offense, such concept policy is an attempt to improve the criminal liability status as a general penalty policy for all offenses (as set out in General Rule Book I). With the enhancement of the criminal liability status in the concept as a general penalty policy for all offenses, the opportunity and guarantee for the victim to obtain compensation according to the concept is broader than the opportunities that exist in the legislation so far. Moreover, according to the concept, although the criminal damages have the status of an additional criminal sanction (ie imposed jointly as principal punishment), it can also be imposed independently in addition to (as an alternative of) principal punishment, ie if the offense is only threatened with a fine single.
2. Law Enforcement; the handling of cases of pedophilia against children must need to be dealt with more seriously, especially in the criminal justice system, law enforcers in this case ranging from the police, prosecutors and judges who handle cases of children, especially children as victims must understand the laws that apply in terms of protection and handling of children. The availability of facilities and infrastructure should not be the reason for enforcing the law
3. Community; in this case parents, teachers, educators should give more attention in fostering children especially after becoming victims of crime. Monitoring the activities and the environment of children in growing up has become a duty that should be implemented especially the advancement of the world in the field of technology that can be access for children to communicate with others outside of the daily environment.

Note

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