

Protection of Children as Victims of Domestic Sexual Violence

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Submission date: 23-May-2024 02:41PM (UTC+0700)

Submission ID: 2386241992

File name: 19-48-1-PB.pdf (464.94K)

Word count: 3952

Character count: 20951

Protection of Children as Victims of Domestic Sexual Violence

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Abstract

Many parents let their children swallow the bitter pill because of their lecherous act. They make their children victims of sexual violence, regardless of the future of the next child. Sexual violence against children results in children going through life with physical impacts and trauma that have terrible, long-lasting, and even very difficult to get rid of. This study aims to analyze the factors and consequences that arise and to analyze the protection given to children as victims of sexual violence in the household. This research is a normative juridical research. The factors that cause children to become victims of sexual violence, among others, are for the interest of studying black magic and because the perpetrator's wife is no longer able to meet their biological needs. The consequence that arises in the child is that the child experiences trauma and is very disturbed psychologically. The protection provided for children is legal assistance, counseling services, health examination services, and monitoring services. In addition, according to Law Number 17 of 2016 the perpetrator is subject to criminal sanctions, given chemical castration, installation of electronic detectors, and rehabilitation.

Keywords:

Protection, Children, Victims of Sexual Violence, Domestic.

DOI:

How to cite:

Simatupang, Nursariani & Faisal, (2020), "Protection of Children as Victims of Domestic Sexual Violence", IJRS: Internasional Journal Reglement Society Vol. 1 (2), p.71-76.

A. Introduction

All forms of violence are violations of human rights. Therefore, every child must get a sense of security and free from all forms of violence. This is in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia. The birth of Child Protection Law Number 23 of 2002 and Law Number 23 of 2004 concerning the Elimination of Domestic Violence is a milestone in an effort to protect victims of violence, especially what happened to children. Every Indonesian citizen is guaranteed his welfare by the state, as well as children. Children are the nation's next generation. Every activity must be protected by the family, society and the state. However, it is not uncommon for them to become the object of sexual violence in which the perpetrators are even their parents. Parents who are supposed to educate their children so that their children can be better often commit sexual violence against their children. Sexual violence committed by biological parents is very threatening to children today.

Many parents let their children swallow the bitter pill because of their lecherous act. Parents do not realize that those who are supposed to protect their children do not even honor their children. They make their children as victims, regardless of the future of the next child. A child who is still in grade V of Elementary School, RI (11 years old), died after becoming a victim of sexual violence perpetrated by his biological father.¹ There are many incidents that show children experiencing sexual violence in the household, where the perpetrator is none other than the child's family and even their parents. However, the reality shows that it is rare among those who are willing and brave to take issue with the violence, because family members will feel ashamed if their family's shame is exposed and known to the general public not only in their neighborhood, but even by the wider community because it could be. the event will be covered by many mass media. Parents have a responsibility to protect and improve the welfare

¹ Nurul Chomariah, *Pelecehan Anak Kenali dan Tangani*, Solo: Tinta Medina, (2014), p.4.

of their children not only in this world but for the sake of their future in the hereafter. Not even making children victims of sexual violence.

Based on the description above, several problems are obtained, namely what are the factors and consequences that arise on children as victims of sexual violence in household and how protection is given to children as victims of sexual violence in the household. This research is a qualitative study, which studies various laws and regulations related to the focus of the problem. Legal research is legal research conducted by examining library materials. The source of research data is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The data collection tool was carried out using documentation study techniques, which were analyzed using qualitative analysis techniques.

B. Discussion

1. Factors and consequences of children as victims of sexual violence in the household

Sexual violence² against children often occurs. Every child should be protected, given sufficient attention and affection for their growth and development. But the facts speak differently. The rise in cases of violence against children in recent years seems to reverse the opinion that children need to be protected. In the modern era like today, there have been a lot of domestic sexual violence committed against children. Some of the perpetrators are the child's biological parents (father). Father is someone who should provide protection to children, but quite the opposite. The father made his son the victim of his crime. Of course, this event never wanted to happen by anyone. Domestic violence against children is not a new case. In fact, cases of family violence in many cases are categorized as serious and have fatal consequences for children, such as murder, torture, causing lifelong disabilities or even death. Likewise, cases of incest or incestuous sexual intercourse that are repeated or for decades occur. However it is considered as a matter of course.

Many people still consider violence against children in the household to be a special affair in one family. The other party does not need to interfere in the problem. Parents think more that their child is their property and responsibility so that they have the right to do whatever they want. Some of the modes of sexual violence committed in household include:

- By taking advantage of family situations that really don't care about other family members, so that their own parents or other family members use them to commit sexual violence,
- Pretending to give excessive affection but behind the pattern of giving excessive affection is as a form to wreak out his father's lust.
- It is done by giving money to children and threats to children.

Based on the facts, sexual violence perpetrated in the household (by parents) against children is carried out with a motive;

- The wife is no longer able to meet her biological needs
- Interested in the shape of his son's body.
- The wife becomes an Indonesian worker abroad so that the perpetrator is not fulfilled by her lust.
- There are occasions when the wife is not at home and unable to satisfy her husband's sexual desire because of illness.
- Disharmony of husband and wife in the household.

Reduced religious values in humans (perpetrators) often cause sexual violence against children to occur frequently. Lack of faith in every human being will open up opportunities to do evil, accompanied by a lifestyle that is not in accordance with the norms that apply in community life and even violates the law, such as drinking alcohol, gambling, and drug abuse. This causes the perpetrator (father) to no longer see the child as someone who must be protected.

The necessities of life coupled with economic hardships require busyness from parents, both father and mother. Currently, many women (mothers) have to be forced to leave their children to work abroad as female workers. The children were left at home with only their father. On the one hand, this is certainly not a mistake, because the child and the father are two parties who have a close blood relationship.

² There are 3 acts of sexual violence, namely: rape, incest, and exploitation. see Abu Huraerah, *Kekerasan Terhadap Anak*, Bandung: Nuansa Cendekia, (2012), p.70.

The father is the head of the family who should be the protector of his child. But on the other hand, this cannot be done. Because nowadays incidents of sexual violence against children perpetrated by their fathers are increasing. The father who is supposed to be the protector of his children, instead makes his son a victim. The father should be the protector for the development of the child, so that the child has good character and personality, and can grow into the nation's future generations.

Mothers should not abandon their children either. Even if mothers have to work to help meet the needs of their families, they should be done without having to leave their children (leaving the child's residence, especially with their father). Although the mother's intention to work is something very noble, it can cause the child to become a victim of crimes committed by the father. The father took the opportunity to do evil that was wide open to commit crimes against his children. We all know that a person's temperament or behavior is not only influenced by himself, but also by opportunities that can provide a way for the perpetrator to commit crimes. It is better if the possibility is closed so that children become victims of sexual violence, especially in their homes. In addition to the things previously explained, the cause of domestic violence against children still occurs is that domestic violence is still considered an individual problem or a localized location of the incident.

In every condition and situation the child must still be protected, the child must be loved, the child must still be nurtured in wise values. The best interests of the child, must be our consideration and concern in every action to children. The problem is, we often don't trust children. Children's reports are not responded to, children's complaints are ignored, children before speaking are told to be silent by yelling or beating. Especially if the perpetrators of violence are their parents. Parents rarely ask their children why children are treated like that, let alone provide a way out. This is our social problem. Domestic violence in children today tends to increase. There are so many causes, but the most influencing thing is because of the economic needs which are increasing day by day.

As a result of sexual violence against children committed in the household (by their parents), it has several negative impacts on the child. The result is;

- a. The child is traumatized, is very psychologically disturbed and even the child does not feel comfortable staying at his house with his mother. Victims do not want to return with their mothers because they think they are not protected by their mothers and feel more comfortable living in the other party's place than having to return home.
- b. Sexual violence experienced by children has a very negative effect on the development and mindset of children.
- c. The psychological mentality of the child is very influencing where the child as a victim experiences severe depression and is even hospitalized for observation by a psychiatrist.
- d. Has a bad impact on the victim's social life, especially at school.

Dealing with children who experience sexual violence should still consider psychological factors. Not only in the position of children as victims, which of course is at risk of experiencing stress and even trauma, but also needs good handling. Sexual violence on children results in injury to the child, even the child can experience the possibility of transmitting venereal disease suffered by the perpetrator (his father). Often it is also found that the victim is at risk for unwanted pregnancy.

According to Pinky Saptandari, the impact experienced by children who are victims of violence is:³

- a. Lack of motivation / self-esteem.
- b. Mental health problems, such as excessive anxiety, eating problems, insomnia.
- c. Serious pain.
- d. Sexual health problems.
- e. Develops aggressive behavior.
- f. Bad dreams and always being scared.
- g. Victim's death.

Violence against children also has an impact on society. The impact is:⁴

- a. The inheritance of the violent environment from generation to generation or from generation to generation.

- b. There remains the mistaken belief that parents have the right to do anything to their children, including the right to commit violence.
- c. The quality of life for community members deteriorates.

Many children who become victims cover up the events they experienced. The child remains silent and keeps it a secret because of fear of threats from the perpetrator or has feelings of shame if the incident is known by the public. This can cause the child to experience delays in the growth process, lazy to learn, to commit suicide. Violence against children is closely related to the increased likelihood of having bad childhood experiences in their home environment, having a greater likelihood of getting personality disorders and in turn, as adults, these children will have a greater likelihood of experiencing depression.

2. Protection of children as victims of sexual violence in the household

Protection of children is a human right that must be obtained by children. Every citizen has an equal position in law and government and is obliged to uphold the law and government without exception (Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia). This statement shows that there is no difference between each person in their position in the law, be it adults, children, men and women. Equality before the law means that all citizens are equal before the law, the same submission of all groups to the ordinary law of the land implemented by the ordinary court. This means that no person who is above the law, whether a state government official or an ordinary citizen, is obliged to obey the same laws.⁵

Article 28b paragraph 2 of the 1945 Constitution of the Republic of Indonesia states that every child has the right to live, grow and develop and is entitled to protection from violence and discrimination. Children are the nation's next generation and the next generation of development, that is, the generation that is prepared as a subject of implementing sustainable development and who is in control of the future of a country. Protection of Indonesian children means protecting the potential of human resources and developing the whole Indonesian people, towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Constitution of the Republic of Indonesia.⁶

Recent developments indicate that acts of sexual violence are in fact very frequent so that adequate legal instruments are needed to eliminate violence in household. The objectives of eliminating domestic violence are (Article 4 of the Domestic Violence Law Number 23 of 2004), namely: preventing all forms of domestic violence, protecting victims of domestic violence, taking action against perpetrators of domestic violence and maintaining household integrity harmonious and prosperous.

Protection of children in a nation is a measure of the nation's civilization, therefore it must be endeavored according to the capabilities of the country and the nation. Child protection activity is a legal action that has legal consequences. Therefore, it is necessary to have legal guarantees for child protection activities. Efforts need to be made to ensure legal certainty for the continuity of child protection activities and prevent fraud that has undesirable negative consequences in the implementation of child protection activities.⁷

Article 10 of the Domestic Violence Law No. 23 of 2004 states that the victim has the right to receive:

- a. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties either temporarily or based on the stipulation of a protection order from the court;
- b. Health services according to medical needs;
- c. Special handling relates to the confidentiality of the victim;
- d. Assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations; and
- e. Spiritual guidance ministry.

The General Assembly of the United Nations states that protection for victims includes, among others;⁸

⁵ Maidin Gultom, *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Anak di Indonesia*, Bandung: Refika Aditama, (2010), p.20.

⁶ Nashriana, *Perlindungan Hukum Bagi Anak di Indonesia*, Jakarta: Rajawali Pers, (2012), p.1.

⁷ 24.

⁸ Maya Indah S, *Perlindungan Korban: Suatu Perspektif Viktimologi dan Kriminologi*, Jakarta: Kencana, (2014), p.123-124.

- a. Victims must be treated with respect for their dignity, and given the right to immediately demand compensation. Legal and administrative mechanisms should be formulated and endorsed to enable victims of crimes to be compensated.
- b. Victims of crime should be informed about their role, timelines, and progress in handling their cases.
- c. Victims of crime must receive compensation to the victim or their family.

²⁷ Children as victims of sexual violence in the household can be protected directly. Directly the activities are aimed directly at ²⁷ child as the victim, by complaining to the authorities for the actions that have occurred to the child. Children as victims of sexual violence receive protection in the form of protection from various threats from within and without themselves. Usually, children as victims will experience a critical period such as excessive fear, anger, or guilt. If this is the case, then the child as a victim is given educational direction, which is able to motivate the child and is able to eliminate the trauma experienced and is able to live his future well. As a victim, the child is accompanied by the victim in solving problems (counseling) and the possibility of placing them in a shelter (shelter) so that the victims will be better monitored and protected and the counselor can quickly help with psychological recovery.

Children are the hope of the nation and when it comes time to replace the older generation in continuing the life of the country. Thus, children need to be nurtured properly so that they are not wrong in their future lives.⁹ E²² component of the nation, whether government or not, has an obligation to seriously pay attention to the growth and development of children. The components that must protect children are parents, family, community, and government. The position of children is very vulnerable so that children must be protected so they do not become victims of sexual violence. Prone children are children who are at great risk of experiencing developmental disorders or problems.

As parents (especially mothers), families and community members should also take protective measures to reduce the number of sexual violence against children. To prevent domestic violence in the household, love and affection must be developed from an early age. Mothers can play a major role in teaching the children at home to love and care for each other. So parents are ready to take responsibility for educating, raising children and giving them enough love so that children grow into mature, moral, healthy and ⁸ intelligent.¹⁰

By law, violence that occurs in the household is regulated by Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Penalties for perpetrators of domestic sexual violence are contained⁷ in Articles 46, 48 and 50, where the maximum threat is 20 years in prison. The judge can also impose additional penalties in the form of: a). limiting the motion of the perpetrator, both aimed at keeping the perpetrator away from the victim within a certain distance and time, as well as limiting certain rights of the perpetrator; b). determination of the perpetrator to follow a counseling program under the supervision of a certain institution.²¹

In particular, the protection of children is contained in Law Number 23 of 2002 concerning Child Protection. This law has been revised with Law Number⁷ 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 17 of 2016 concerning Second Amendment to Law Number 23¹⁴ 2002 concerning Child Protection. Article 76D of Law Number 35 Year 2014 states that everyone is prohibited from committing ¹⁴ violence or threats of violence to force children to have intercourse with him or other people. Everyone is prohibited from committing violence or threats of violence, coercing, tricking, committing a series of lies, or inducing a child to commit or allow obscene acts (Article 76E of the Child Protection Act).²

The birth of Law Number 17 of 2016 aims to ¹⁹ increase criminal sanctions and provide action against perpetrators of sexual violence against children. The form of protection provided by Law Number 17 of 2016 is that the state takes optimal and comprehensive steps by not only providing the weighting of criminal sanctions, also implementing preventive forms by providing measures in the form of chemical castration, installing electronic detection devices, and rehabilitation for perpetrators of sexual violence against children. This is stated in Articles 81 and 82 of Law Number 17 of 2016.

If sexual violence is committed by parents, guardians, people with family ties, child caregivers, educators, education personnel, officers who handle child protection, or is committed by more than one person together, the penalty is added by 1/3 (one third) of the criminal threat as referred to in paragraph

¹⁰

⁹ Maidin Gultom, *Perlindungan Hukum terhadap Anak dan Perempuan*, Bandung: Refika Aditama, Bandung, (2012), p.68.

¹⁰ Suzie Sugijokanto, *Cegah Kekerasan Pada Anak*, Jakarta: Kompas Gramedia, (2014), p.1.

(1). Criminal charges for perpetrators of sexual violence against children contained in Article 81 paragraph (1) are punishable by 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). If sexual violence against a child causes more than 1 (one) victim, results in serious injury, mental disorders, infectious diseases, impaired or loss of reproductive function, and/or the victim dies, the perpetrator is sentenced to death, life, or the minimum imprisonment. 10 (ten) years and a maximum of 20 (twenty) years.

C. Conclusion

Every component of the nation, whether government or not, has an obligation to seriously pay attention to the growth and development of children. The components that must protect children are parents, family, community and government. The birth of Law Number 17 of 2016 is a criminal burden for perpetrators of sexual violence against children in the household. With this law it is hoped that it can protect children from becoming victims of sexual violence, especially in the household.

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