

THE LEGAL PROTECTION OF CHILDREN AS VICTIMS IN RESTORATIVE JUSTICE BASED ON JUSTICE VALUE

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Abstract

The research purpose of this study is to determine the causes of children becoming victims of criminal acts and the legal protection of children as victims of justice-based crimes. The approach method used normative juridical, research results which state that the protection of human rights for children who are victims of crimes is regulated in law as a legal protection for the State's obligations to the Indonesian people in ensuring the implementation of fundamental rights. The process of protecting and upholding human rights is carried out based on the state ideology, namely Pancasila which prioritizes human values, respecting the human rights of every citizen, both adults and children

Keywords: Child; Justice; Protection.

A. INTRODUCTION

Children are creatures created by God Almighty. Since in the womb until birth, children have the right to survival, the right to independence and protection from parents, family, society, and the state.¹ Children are part of the younger generation as one of the human resources who are the potential and successors of the ideals of the nation's struggle, which have strategic and special characteristics and characteristics, require guidance and protection in order to ensure physical, mental and social growth and

¹ Nilma Suryani dan Nani Mulyati, Penegakan Hukum Terhadap Pelaku Pedofilia Berdasarkan Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak *Jurnal Hukum Pidana dan Kriminologi*, *Bagian Hukum Pidana Fakultas Hukum Universitas Andalas*, Vol. 10, No. 2, Tahun 2012, page.16

development as a whole, harmonious, harmonious, and balanced.² However, children are not toys or possessions. With them comes great responsibility.³

As a state of law, Indonesia provides protection for every citizen by providing institutions capable of providing justice in the form of a free and neutral judiciary. This is based on the fact that every human being since birth has rights and obligations that are free and basic, the state and the administration of power in a country are not allowed to reduce the meaning of freedom and human rights.⁴ Crime can happen to everyone, both men, women and children. Children are very vulnerable to victims of violent crimes, because children are very weak humans and still need protection from adults around them.⁵

In essence, children cannot protect themselves against various mental, physical and social threats in various fields of life and livelihood. The rights of children and protecting them from violence can be found in two basic terms in Indonesian Law; 'maintenance and education of children' on the one hand and 'Child Protection' on the other.⁶ If traced carefully, affection is the most basic psychological need in human life. Legal protection of children or legal protection of children may include legal protection of children in the field of civil law and in the field of public law. Protection of children in the field of public law includes material criminal law and formal criminal law.⁷

The protection of human rights for children who are victims of crimes is regulated in law as a legal umbrella for the State's obligations to the Indonesian people, based on the state ideology, namely Pancasila which puts forward human values, respects the human rights of every citizen, both adults and children.⁸ If we look deeper into the definition of child protection, it is seen that it has been clearly regulated in Act No. 23 of 2002 concerning Child Protection which has been amended by Act No. 35 of 2014, where Article 1 number 2 provides the following limits on child protection: Children are all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection from violence and discrimination.

- 2 Kadek Raditya dan Saptala Madala, Perlindungan Hukum Terhadap Anak Yang Korban Tindak Pidana Pelecehan Seksual (Studi Di Polres Buleleng), *Kertha Widya Jurnal Hukum*, Vol. 8, No. 1, Agustus 2020, page.137-156
- 3 M. Abdul Fattah Santoso, The rights of the child in Islam: their consequences for the roles of state and civil society to develop child friendly education, *Indonesian Journal of Islam and Muslim Societies*, Vol. 7, No. 1, 2017, page. 101-124
- 4 Nova Ardianti Suryani, Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Penganiayaan Ditinjau Dari Undang-Undang Perlindungan Anak, *Media of Law and Sharia*, Vol. 2, No. 1, 2020, page.134-145
- 5 Abu Huraerah, *Kekerasan Terhadap Anak*, Nuansa Cendekia, Bandung, 2012, page.43
- 6 Khoiruddin Nasution, Syamruddin Nasution, Implementation of Indonesian Islamic Family Law to Guarantee Children's Rights, *Al-Jāmi'ah: Journal of Islamic Studies*, Vol. 59, No. 2, 2021, page.347-374
- 7 Tirsha Aprillia Sinewe, Perlindungan Hukum Terhadap Anak Sebagai Korban Kejahatan Menurut Hukum Pidana Indonesia, *Lex Crimen* Vol. V, No. 6, Ags 2016, page.55-63
- 8 Subi Moh, *Implementasi Hak Asasi Manusia dalam Undang-Undang Dasar 1945*, Rasi, Jakarta, 2017, page.32

Child victims of criminal acts to this day still cannot be prevented optimally, both in various forms of crime. Because children are the next generation of the nation, their rights and interests must be protected, so what is mandated by the child protection law must be realized and realized. So that his mental recovery can be overcome and treated with compensation guaranteed by the Child Protection Act.⁹ Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, state, government, and local governments.¹⁰ Efforts towards legal protection for children should be started right now, so that in the future they can participate fully in helping the development of the nation and state. According to the provisions of Articles 2 paragraphs (3) and 4 of the Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare, it is stated that children have the right to care and protection both in the womb and after the child is born. Children have the right to protection from the environment in which they live which can harm or interfere with their normal growth and development, this form of protection for children aims to seek right and fair treatment, to achieve the welfare of the child.¹¹

Protection of children is not entirely the obligation of law enforcers, but it is also an obligation for all of us as a society that upholds norms. Behavior that is not in accordance with the norms or can be referred to as deviation from the agreed norms turns out to cause disruption of order and peace in human life. Such deviations are usually labeled by society as a violation and even as a crime.¹² From the limitation on child protection provided by Article 1 of Act No. 23 of 2002 which was amended by Act No. 35 of 2014 concerning Child Protection, children need to be protected from whatever will happen to them. Children are very easy to become victims of all forms of crime because children have not been able to do things to protect themselves properly.

Research purpose in this study is to find out the causes of children becoming victims of criminal acts and legal protection of children as victims of justice-based crimes so that they can be useful in implementing legal protection for cases that result in children as victims.

B. RESEARCH METHODS

The approach method used in this legal research uses a normative juridical approach with a focus on examining the application of rules or

9 Fitri Yani, Ibnu Madjah, Azan Nurohim, Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Kesusilaan Menurut UU Perlindungan Anak, *Jurnal Lex Justitia*, Vol. 3, No. 2, Juli 2021, page.164-178

10 Hiawan Christianto, *Kejahatan Kesusilaan Penafsiran Ekstensif Dan Studi Kasus*, Suluh Media, Yogyakarta, 2017, page.15

11 Leden Marpaung, *Kejahatan Terhadap Kesusilaan*, Sinar Grafika, Jakarta, 2004, page.5

12 Surjanti, Bentuk Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Ditinjau Dari Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak Dalam Pemeriksaan Peradilan Di Pengadilan Negeri Tulungagung, *Jurnal Fakultas Hukum Universitas Tulungagung*, 2019, page.31-45

norms in positive law,¹³ In research or study of normative legal science, activities to explain the law do not require data support or social facts, because normative legal science does not recognize social data or facts which are known only as legal materials, so to explain the law or to seek meaning and give value it will The law only uses legal concepts and the steps taken are normative steps.¹⁴ Normative legal research includes research on legal principles, legal systematics, and legal synchronization.¹⁵

C. RESULTS AND DISCUSSION

1. Factors that Cause Children to become Victims of Crime

Children are part of the younger generation and are one of the human resources who play a strategic role in the future of the nation's struggle, its potential and sustainable ideals. In addition, it has special features that guarantee the sustainability of the nation and the state in the future. Every child will be able to take responsibility. Therefore, children must have the widest opportunity to grow and develop optimally, both physically and mentally, as well as socially and morally. Protection must also be provided to improve the welfare of children by ensuring that all rights are respected and recognized without discrimination.¹⁶ In essence, children cannot protect themselves against various mental, physical and social threats in various fields of life and livelihood. If traced carefully, affection is the most basic psychological need in human life.¹⁷

Based on Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, every child has the right to survival, growth, and development and the right to protection from violence and discrimination. Children as creatures of God Almighty and as social beings since in the womb, have the right to live and be independent and receive protection.¹⁸

Children as victims can suffer physical and non-physical losses. Physical losses can be in the form of disability, injury and even death. Non-physical losses can be in the form of a disturbed mentality, as well as unrelenting fear. Mattalata¹⁹ argues that efforts to provide assistance to victims are not only the obligations of the perpetrators, but also the

13 Jhonny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Malang, 2011, page.295

14 Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, 2008, page. 87.

15 Soerjono Soekanto, *Pengantar Penelitian Hukum*, Universitas Indonesia Press, Jakarta, 1986, page.51.

16 May J, Osmond K, Billick S, Juvenile delinquency treatment and prevention: a literature review, *Psychiatr Q*, Vol. 85, No. 3, September 2014, page.295-301

17 Purwanto, Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Dalam Perspektif Hukum Positif Indonesia, *Jurnal Idea Hukum*, Vol. 6, No. 1, 2020, page.77-95

18 Silviana Anggraeni Putri, Nur Rochaeti, Budhi Wisaksono, Perlindungan Hukum Bagi Anak Korban Tindak Pidana Perdagangan Manusia Berdasarkan Undang-Undang No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak, *Diponegoro Law Journal*, Vol. 6, No. 1, Tahun 2017, page.1-10

19 Yazid Effendi, *Victimology*, Penerbit Unsoed, Purwokerto, 2001, page.37

obligations of citizens and the state. Protection of victims as an effort to provide fair treatment both for victims, perpetrators and the community is an aspired hope.²⁰

The occurrence of crimes against children is caused by various factors (multiple factors) that influence it. According to Edi Suharto, crimes against children are generally caused by internal factors originating from the child itself or external factors originating from family and community conditions such as:²¹

- a. Children have physical disabilities, mental retardation, behavior disorders, autism, are too innocent, have weak temperaments, do not know their rights, and are too dependent on adults.
- b. Poverty of the family, many children.
- c. The family is broken (broken home) due to divorce, the absence of a mother in the long term, or a family without a father.
- d. Psychologically immature families, inability to educate children, unrealistic expectations of parents, unwanted children, children born out of wedlock.
- e. Mental disorders in one of the parents.
- f. Repeated history of violence: parents who were often neglected or abused often treated their children in the same way.
- g. Poor social environmental conditions, slum settlements, displacement of children's playgrounds, indifference to acts of exploitation, low views on the value of children, increasing understanding of the wage economy, weak legal instruments, lack of stable social control mechanisms.

2. Legal Protection for Children As Victims of Justice-Based Crimes

The definition of a victim is according to Article 1 number 2 of Act No. 13 of 2006 concerning the Protection of Witnesses and Victims are people who experience suffering, physical, mental, and/or economic loss caused by a criminal act, hereinafter according to Act No. 23 of 2004 concerning the Elimination of Domestic Violence are people who experience violence and/or threats of violence in the family environment.²²

The protection of human rights for children who are victims of crimes is regulated in law as a legal umbrella for the State's obligations to the Indonesian people in ensuring the implementation of fundamental rights in the process of protecting and upholding human rights²³ carried

20 Haryanto Dwiatmodjo, Pelaksanaan Perlindungan Hukum Terhadap Anak Yang Menjadi Korban Tindak Pidana di Wilayah Hukum Pengadilan Negeri Banyumas, *Jurnal Dinamika Hukum* Vol. 11, No. 2, Mei 2011, page. 201-214

21 M. Iqbal, Perlindungan Hukum Terhadap Anak Korban Tindak Pidana, *Kanun Jurnal Ilmu Hukum*, No. 54, Th. XIII, Agustus 2011, page. 97-110

22 Miszuarty, Pelaksanaan Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Sebagai Bentuk Pembaruan Hukum Pidana Berdasarkan Peraturan Pemerintah Nomor 43 Tahun 2017, *Soumatara Law Review*, Vol. 2, No. 1, 2019, page.115-135

23 Putra, Muhammad Amin, Eksistensi Lembaga Negara Dalam Penegakan HAM Di Indonesia, *Fiat Justisia Jurnal Ilmu Hukum*, Vol. 9, No. 3, 2015, page.12-20

out based on the state ideology, namely Pancasila which puts forward human values, respects the human rights of every citizen, both adults and children²⁴. This effort requires guarantees for the continued protection of child victims of criminal acts so that they not only provide legal certainty, but also justice for the child.²⁵

Children are gifts and mandates of Allah SWT who are always guarded and protected²⁶ then the child's right to welfare is regulated in Chapter II of Act No. 4 of 1979. However, this kind of thing is often ignored by parents who often assume that a child is their biological child so that parents are free to treat their child as they wish.²⁷

The principle of legal protection for children must be in accordance with the Convention on the Rights of the Child as ratified by the Government of the Republic of Indonesia with Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Right of the Child. Child). With the mention of the Convention on the Rights of the Child in consideration of the enactment of Act No. 11 of 2012 and the general explanation of Act No. 11 of 2012, both directly and indirectly, Act No. 11 of 2012 is an elaboration of the Convention on the Rights of the Child.²⁸

The issue of legal protection and children's rights is one of the approaches to protecting Indonesian children. In order for the protection of children's rights to be carried out in an orderly, orderly and responsible manner, legal regulations are needed that are in line with the development of Indonesian society which are fully imbued with Pancasila and the 1945 Constitution of the Republic of Indonesia.

Arif Gosita argues that child protection is an effort so that children can carry out their rights and obligations.²⁹ The protection of children's rights is essentially directly related to the regulations in the legislation. Policies, efforts and activities that guarantee the realization of the protection of children's rights are based on the consideration that children are a vulnerable and dependent group, in addition to the existence of groups of children who experience obstacles in their growth and development, both spiritually, physically and mentally.

The legislation referred to in the context of the discussion here includes Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims, Act No. - Act No.

24 Subi Moh, *Op.Cit*, page.32

25 Zein Fadhillah, *Anak dan Keluarga Dalam Teknologi Informasi*, Perpustakaan Nasional, Jakarta, 2017, page.12

26 Chandra Mardi, *Aspek perlindungan anak Indonesia*, Kencana, Jakarta, 2018, page.27

27 Patty, J, *Tindak Kekerasan Terhadap Anak di Lingkungan Satuan Pendidikan dan Peranan Keluarga Sebagai Upaya Non-Penal Dalam Pencegahan*, *Jurnal Belo*, Vol. 5, No. 2, 2020, page.115-129.

28 Pratiwi Sihombing, *Tinjauan Yuridis Pemberian Bantuan Hukum Terhadap Anak Korban Tindak Pidana*, *Lex Crimen*, Vol. X, No. 3, Apr 2021, page.123-131

29 Arif Gosita, *Masalah Korban Kejahatan: Kumpulan Karangan*, Universitas Trisakti, Jakarta, 2009, page.41

25
21 of 2007 concerning Eradication of the Criminal Act of Trafficking in Persons, Act No. 23 of 2004 concerning Elimination of Domestic Violence, Act No. 8 of 1981 concerning Criminal Procedure Code, Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection, Act No. 17 of 2016 concerning the enactment of Perpu No. 1 of 2016 into law.³⁰

In Article 89 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, abbreviated as UU SPPA, it is stated that child victims and or child witnesses are entitled to all protections and rights regulated in the provisions of the legislation. From these provisions, it can be said that child victims are entitled to all forms of legal protection that have been regulated in all legislation, although the legislation does not specifically state that the protection is intended for child victims. Protection of victims is regulated in Act No. 31 of 2014 concerning Amendments to Act No. 13 of 2006 concerning Protection of Witnesses and Victims, where in Article 5 paragraph (1) it is stated that victims are among others entitled to: obtain protection for security personal, family, property, and free from threats related to the testimony that will be, is being, or has been given, participate in the process of selecting and determining the form of protection and security support, provide information without pressure, receive information about court decisions, get advice law, get assistance. In this law, it is emphasized that the purpose of protecting witnesses and victims is to make witnesses and victims feel safe in providing information in every criminal justice process and in addition it is also emphasized that the protection given to witnesses and victims is based on respect for human dignity a sense of security, justice, non-discrimination and legal certainty.³¹

D. CONCLUSION

Crimes against children are generally caused by internal factors originating from the child itself or external factors originating from family and community conditions such as children with physical disabilities, mental retardation, behavior disorders, autism, being too innocent, having a weak temper, not knowing their rights and too dependent on adults, poverty, family conditions and environmental conditions. The protection of human rights for children who are victims of crimes is regulated in law as a legal protection for the State's obligations to the Indonesian people in ensuring the implementation of fundamental rights. The process of protecting and upholding human rights is carried out based on the state ideology, namely Pancasila which prioritizes human values, respecting the human rights of every citizen, both adults and children, this effort requires guarantees for the continuity of protection of child victims of crime so that they not only provide legal certainty, but also justice for the child.

30 Efendi Pasaribu, *Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Kejahatan Dari Perspektif Ham Di Indonesia*, *Lex et Societatis*, Vol. V, No. 4, Jun 2017, page.58-68

31 *Ibid*

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