
Non Penal Policy As A Legal Protection Effort Against Child Victims Of Sexual Violence

¹Syaiful Asmi Hasibuan, ²Arifuddin Muda Harahap

¹Program Studi Ilmu Hukum, Fakultas Sosial Sains, Universitas Pembangunan Panca Budi ²Fakultas Syari'ah dan Hukum, Universitas Islam Negeri Sumatera Utara

*Corresponding Author

Email : syaiful_asmi@dosen.pancabudi.ac.id

Abstract

Sexual violence in general often considered a crime against morality alone. The connection between sexual violence and moral issues keeps the victim silent and sometimes the victim is blamed for the violence that has befallen her. Furthermore, what happened to the victim was considered a disgrace, not only for himself but also for his family and even for the environment in which he lived. In addition, several reports indicate that the impact of sexual violence on victims is very serious, in the form of trauma that can last a lifetime for the victim, and in some cases sexual violence can incite the victim to commit suicide. Victims of sexual violence demonstrate that sexual violence can destroy the victim's entire life, leaving the victim feeling unable to continue living. So it must be recognized that sexual violence can actually threaten the sustainability of a nation and the quality of future generations. Based on the background and rationale above, it is interesting for the author to examine how non-penal policies are an effort to protect children from sexual violence in the household. The type of research used is normative legal research which is carried out by examining library data using secondary data sources, both in the form of primary legal materials and secondary legal materials as well as tertiary legal materials. This research is prescriptive in nature and uses qualitative analysis methods in explaining the relationship between the various types of data obtained so that several things can be drawn that can be concluded in this study. The use of non-penal measures, viewed from the point of view of criminal policy, occupies a key and strategic position from all efforts in overcoming criminal acts (crimes) or criminal acts, especially in the scope of sexual violence, which must be identified and made effective. Non-penal efforts are more of a preventive action, therefore the main target is to overcome the conducive factors that cause criminal acts (crimes). These conducive factors, among others, are centered on problems or social conditions that can directly or indirectly lead to or foster criminal acts. So that non-penal efforts can include activities such as providing compensation, strengthening social education in order to develop responsibility, strengthening mental health through moral and religious education. This includes activities in the context of improving community welfare efforts, monitoring and monitoring activities on an ongoing basis.

Keywords: Non Penal Policy, Legal Protection, Child Victims, Sexual Violence:

INTRODUCTION

The crime of sexual violence is often considered a crime against morality alone. Whereas in some good news in the media it shows that the impact of sexual violence on victims is very serious, in the form of trauma that may last a lifetime, even in some cases, sexual violence can encourage victims to commit suicide (<https://regional.kompas.com>). The view that sexual violence is a crime against decency is even supported by the state through the contents of the Criminal Code (KUHP). In the Criminal Code, sexual violence is considered a crime as well as a violation of moral norms (KUHP, Pasal 532-535, Pasal 300-303, Pasal 536-547). This categorization not only reduces the degree of criminal acts committed, but also creates the view that sexual violence is a matter of morality alone. The association of sexual violence with issues of morality causes victims to remain silent and sometimes victims are blamed for the violence they experience. Besides that, what the victim experienced was considered a disgrace, not only for himself but also for his family and even his environment. There are also victims who were evicted from their homes and villages because they were

considered unable to maintain honor and damage the good name of their families or communities.

The ostracism and stigmatization or labeling of victims of sexual violence can even take place even if the perpetrator is found guilty by the court. It is ironic to see this reality, while the state and the government are obliged to provide protection for children (UU No. 35/2014, Pasal 20). 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 the entire life of the victim, causing the victim to feel unable to continue her life. It must be realized that sexual violence actually threatens the sustainability of the nation and the quality of future generations. Moreover, if we study further about the law on the elimination of domestic violence, if the perpetrator is proven to have committed a criminal act of sexual violence against children and then the perpetrator (parents) is sentenced to prison to account for his actions, then who else will provide a living for the victim (children))? If the perpetrator is subject to a fine, then the state will take payment for the fine. Meanwhile, not infrequently the money used to pay the fine is money that should be used by the victim to meet their daily needs later.

Victims of criminal acts can experience a second time as victims, namely physical victims as well as material victims as a result of the criminal justice process. Meanwhile, the purpose of sentencing must provide benefits to many people, not only for certain people (perpetrators), but the law must be able to guarantee the true happiness of the greater part of society (*the greatest happiness of the great number*) (Chairul Huda, 2008). The law cannot be denied. The Indonesian national law has regulated the protection of victims of criminal acts, but the existing laws governing legal protection for victims of criminal acts are still partial, whose existence is scattered in various laws and regulations so that they only apply to certain criminal acts. From the juridical aspect, there are three aspects that must be considered in understanding the obstacles faced by victims, namely aspects of substance, structure, and legal culture (Lawrence M. Friedman, 2001). At the substance level, although there is an affirmation of the right to protection from violence and discrimination, some types of sexual violence are not yet recognized by Indonesian law. As the Criminal Code (KUHP) only regulates sexual violence in the context of mere physical form and intercourse. At the structural level, law enforcement agencies have begun to create special units and procedures to handle cases of violence against children, including other forms of sexual violence regulated by law.

However, units and procedures within law enforcement agencies are currently not available at all levels of administration and have not been supported by adequate facilities or perspectives for handling victims. The level of culture or legal culture, there is still a public perspective on the morality of sexual violence. As a result, the attitude towards the case does not show empathy for the victim's child, and even tends to blame the victim. Questions such as what to wear, where to be, at what time, how to do it are some of the questions that are often asked when cases of sexual violence occur. This kind of question not only shows the victim's lack of perspective, but is also a form of judging the victim and making the victim experience violence again (*revictimization*). Based on the background and rationale above, it is interesting for the author to examine how non-penal policies are an effort to protect children from sexual violence in the household?

RESEARCH METHODS

Type of research used is normative legal research which is carried out by examining library data using secondary data sources, both in the form of primary legal materials and secondary legal materials as well as tertiary legal materials (Ediwarman, 2015). This research

is prescriptive analysis (Marzuki, Peter Mahmud, 2010), which means that this research does not only describe by analyzing a situation or symptom, both on the plains of positive and empirical law, but also this research provides the proper arrangements and solves the legal problems that are the object of this research. To be able to provide an assessment of this research, the data collected using qualitative analysis methods will be presented in the form of a systematic description by explaining the relationship between various types of data, then all data are selected and processed and then analyzed descriptively so that several things can be drawn that can be used conclusions in this study (Tampil Anshari Siregar, 2005).

RESULTS AND DISCUSSION

In addition to criminal law efforts (penal), comprehensive prevention of sexual violence also requires non-criminal law efforts (non-penal). The use of criminal law is only trying to overcome the symptoms or consequences of the disease and not as a medicine to overcome the causes of the disease. Due to these limitations, the prevention of criminal acts (crimes) through criminal law must be carried out in an integrated manner with the prevention of criminal acts (crimes) through other means or are non-penal. Efforts to overcome criminal acts (crimes) through non-penal means are more of a preventive action (*preventive*), in order to deal with conducive factors that cause criminal acts (crimes). The use of non-penal measures, viewed from the point of view of criminal policy, occupies a key and strategic position from all efforts in overcoming criminal acts (crimes) or criminal acts, especially in the scope of sexual violence, which must be identified and made effective. Non-penal efforts are more of a preventive action, therefore the main target is to overcome the conducive factors that cause criminal acts (crimes). These conducive factors, among others, are centered on problems or social conditions that can directly or indirectly lead to or foster criminal acts.

So that non-penal efforts can include activities such as providing compensation, strengthening social education in order to develop responsibility, strengthening mental health through moral and religious education. This includes activities in the context of improving community welfare efforts, monitoring and monitoring activities on an ongoing basis. Besides that, socialization is also carried out on preventing the occurrence of victims by conducting, creating a climate that can prevent and reduce people becoming victims by disseminating information on how to prevent victims from occurring, appointing crime-prone areas, developing a sense of vigilance and responsibility, procuring laws and regulations. the law that regulates and guarantees the rights and obligations of the victim (Arif Gosita, 1983).

Non-penal efforts can also be pursued by making the community healthy through social policies and by exploring various potentials that exist within the community itself, it can also be used to explore non-penal efforts from various other sources which also have a potential preventive effect. Other sources, for example, mass media, the use of technological advances and the use of potential preventive effects from law enforcement officers (Barda Nawawi Arief, 2008). Continuous police patrol activities in places prone to sexual crimes are also important. For example, by making regular visits to the community which can be useful to build a sense of security in children. These things will certainly open up opportunities for cases to be revealed and have a preventive effect on the perpetrators of sexual acts.

The previous discussion has illustrated that the issue of sexual violence against children is not only related to punishment. Recommendations to prevent and protect children from sexual violence must also consider other factors. The phenomenon of sexual violence against children must receive more serious attention because it has such a large impact on child victims and will often cause panic in society. Therefore, it is necessary to identify effective

steps for the benefit of child victims of domestic sexual violence, while taking into account the special circumstances (factors) of the occurrence of the crime. So the policy to respond to the phenomenon of sexual violence against children must be considered comprehensively based on evidence, and not seen as a legal reaction to a violation of the law or a crime. Protection of children is an effort or activity by all levels of society in various positions and roles, who realize how important children are as the successor to the ideals of the nation and state in the future. Child protection is a manifestation of the enforcement of justice in the midst of society, thus child protection is sought in various fields of national and state life. The law is a guarantee of the protection process for children. Arif Gosita stated that legal certainty must be sought for the continuity of child protection activities and prevent the emergence of unfavorable and unwanted impacts from the implementation of child protection (Gultom, Maidin, 2014).

The implementation of child protection is based on Pancasila and is based on the 1945 Constitution of the Republic of Indonesia as well as the basic principles of the Convention on the Rights of the Child, including: not discriminating, providing the best interests of the child, the right to life, survival, and development, and appreciation. to the opinion of the child (UU No. 35/2014, Pasal 2), Efforts to protect children need to be continuously made in order to maintain the welfare of children, considering that children are one of the valuable assets for the progress of a nation in the future. The state together with the whole community work together in providing adequate protection to children from various forms of violence and manipulation by irresponsible people who use children as vehicles for their crimes, so that children as the nation's next generation can stand firm in entering the life to come. Efforts to protect children who are victims of Tindak Pidana Kekerasan Seksual are not solely the duty of law enforcement officers, but also the obligation of the community to help restore the conditions of rape victims in social life (UU No. 23/2004, Pasal 15).

CONCLUSION

Use of non-penal measures, viewed from the point of view of criminal policy, occupies a key and strategic position from all efforts in overcoming criminal acts (crimes) or criminal acts, especially in the scope of sexual violence which must be identified and made effective. Non-penal efforts are more of a preventive action, therefore the main target is to overcome the conducive factors that cause criminal acts (crimes). These conducive factors, among others, are centered on problems or social conditions that can directly or indirectly lead to or foster criminal acts. So that non-penal efforts can include activities such as providing compensation, strengthening social education in order to develop responsibility, strengthening mental health through moral and religious education. This includes activities in the context of improving community welfare efforts, monitoring and monitoring activities on an ongoing basis. Besides that, socialization is also carried out on preventing the occurrence of victims by conducting, creating a climate that can prevent and reduce people becoming victims by disseminating information on how to prevent victims from occurring, appointing crime-prone areas, developing a sense of vigilance and responsibility, procuring laws and regulations. laws that regulate and guarantee the rights and obligations of the victim. These things will certainly open up opportunities for cases to be revealed and have a preventive effect on the perpetrators of sexual acts.

REFERENCES

- <https://regional.kompas.com> "Tragis, Ibu Muda 21 Tahun Bunuh Diri karena Malu Diperkosa 7 Pemuda" Juli 2020.
- Ketentuan tindak pidana kesusilaan dalam KUHP dapat dikelompokkan menjadi: 1. Tindak Pidana kesusilaan yang berkaitan dengan seks, diantaranya: a. Bentuk Kejahatan diatur dalam pasal 281-294; b. Bentuk Pelanggaran diatur dalam pasal 532-535; 2. Tindak Pidana Kesopanan, diantaranya: a. bentuk kejahatan diatur dalam pasal 300-303; b. Bentuk pelanggaran diatur dalam pasal 536-547 KUHP.
- Undang-undang Nomor 35 tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 tahun 2002 tentang perlindungan Anak, Pasal 20.
- Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, (Jakarta: Kencana Prenada Media Group, 2008) hlm. 133.
- Lawrence M. Friedman, *American Law at Introduction, Second Edition*, Terjemahan Wishnu Basuki, (Jakarta: Tatanusa, 2001) hlm. 190
- Ediwarman, *Monograf Metodologi Penelitian Hukum Panduan Penelitian Skripsi, Tesis dan Disertasi*, (Medan: Sofmedia, 2015) hlm. 25-27.
- Marzuki, Peter Mahmud., *Penelitian Hukum*, (Jakarta: Kencana, 2010) hlm. 22
- Tampil Anshari Siregar, *Metodologi Penelitian Hukum*, Medan: Pustaka Bangsa Press, 2005) hlm. 103
- Arif Gosita, *Masalah Korban Kejahatan Kumpulan Karangan*, (Jakarta: Akademika Pressindo, 1983) hlm. 52.
- Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan konsep KUHP Baru)*, (Jakarta: Kencana, 2008) hlm. 49
- Gultom, Maidin., *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia*, Edisi Revisi, (Bandung: Rafika Aditama, 2014) 40
- Undang-Undang No. 35 tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 tahun 2002 tentang Perlindungan Anak, Pasal 2
- Undang-Undang Nomor 23 tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga, Pasal 15