

LEGAL PROTECTION OF CHILDREN AS VICTIMS OF SEXUAL EXPLOITATION

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Abstract

The government has accommodated children's rights in Law Number 39 of 1999 concerning Human Rights which is an umbrella act for all forms of human rights protection in Indonesia, including children's rights. Commercial Sexual Exploitation of Children (CSEC) in girls where girls are easily persuaded, is sold at a high selling value. Consumers assume that girls are cleaner from venereal diseases and not too many suffer from them. Children who are victims of CSEC are entitled to legal protection from law enforcement, the government and the state to ensure that children's rights remain unfulfilled. Normatively, the rights of CSEC victims are adequately protected by Law Number 23 of 2002 concerning Child Protection (Articles 4-20). In this case, the protection of children's rights has acquired a stronger legal basis, because in more detail the rights and obligations of the child's executors have been regulated in such a way, including their criminal provisions. Children of CSEC victims receive special protection through Article 59 and Article 64 paragraph (3) of Law No. 23/2002. In addition to Article 5 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims

Keywords: Commercial sexual exploitation of children, legal protection

INTRODUCTION

Children are trusts as well as gifts of God Almighty, which must always be maintained because in him is attached the dignity, dignity and rights as human beings that must be upheld. Children's human rights are part of human rights contained in article 28 B paragraph 2 of the 1945 Constitution and the United Nations Convention (Mansur & Gultom, 2017).

Nations on the Rights of the Child. In terms of national and state life, children are the future of the nation and the next generation of national ideals, so that every child has the right to survival, growth and development, participation and the right to protection from acts of violence and discrimination as well as civil rights and freedoms (Salam, 2015).

Parents, families and communities participate in maintaining and maintaining these human rights in accordance with the obligations imposed by law. Similarly, in the context of implementing

child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring their optimal and directed growth and development (Barda Nawawi Arief, 2018).

As a manifestation of the mandate of the 1945 Constitution, in order to uphold children's rights, the government through its functions and authorities has accommodated the rights of children in Law No. 39 of 1999 concerning Human Rights. Law No. 39 of 1999 is an umbrella act for all forms of human rights protection in Indonesia, including children's rights (Dubowitz, 2017). In addition, the law also regulates the implementation of the obligations and responsibilities of parents, families, communities, governments and states to provide protection to children. As stipulated in article 3 paragraph 3 of Law No. 39 of 1999 which reads "Everyone is born free with equal and equal human dignity and dignity and everyone's right to the protection of human rights and basic human freedoms, without discrimination (Soemitro, 2020).

However, the government's efforts to provide protection for children's rights as stipulated in the law have not been effective. It is proven that there are still many cases of abuse against children, namely in the form of violence and discrimination against children committed by adults. Children often receive harsh and unnatural treatment from adults. This is because children are very weak (De Bie, 2019). In addition, adults always assume that children can easily be used as victims of crime. Most of them are always used as targets of various forms of criminal acts both acts of violence (persecution), exploitation (forced labor, slavery and others) and sexual harassment such as fornication, rape. Even more tragically, children are often victims of commercial child sexual exploitation (Doek & Drewes, 2018).

Commercial Sexual Exploitation of Children (CSEC) is a crime committed against children that is currently rampant and is often discussed in various media both print and electronic media, besides that this crime often occurs in the domestic scope between villages and cities and across national borders. In the modus operandi of this crime involves some people or even involves corporations and state administrators who abuse their authority and power so that the crime is more widespread in the form of crime networks both organized and unorganized (Mansyur & Dikdik, 2015).

CSEC mostly occurs in girls, where girls are easy to persuade, sold at a fairly high selling value. This is because consumers think that girls are cleaner from venereal diseases and not too many who use them. Especially if the child is still a virgin, the consimen is willing to reach into the pocket of up to millions of rupiah. This is of course very tempting for actors to make a profit (Reksodiputro, 2017).

ESKA perpetrators use various ways to launch these actions, namely attracting or trapping their victims by persuading, seducing, cheating, entangling with debt and posing as job seekers. After the perpetrator succeeds in committing his act against his victim, the victim is trafficked and makes him a commercial sex worker or serung called a prostitute (Reid & Jones, 2011). The provisions regarding the prohibition for CSEC have actually been included in article 78 of Law No.

23 of 2002 concerning Child Protection which reads "Everyone who knows and deliberately allows children in emergency situations as referred to in article 60, children facing the law, children from minority and isolated groups, children who are economically and/or sexually exploited, trafficked children, children who are victims of abuse of narcotics, alcohol, psychotropic substances and other addictive substances (NAPZA), children who are victims of kidnapping, children who are victims of trafficking, or children victims of violence as referred to in article 59, even though the child needs help and must be assisted, shall be punished with a maximum imprisonment of 5 (Five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah) (Salman, 2023).

Based on article 78 of Law No. 23/2002 mentioned above, anyone who exploits children is threatened with a maximum imprisonment of 5 years and/or a maximum fine of Rp. 100,000,000.00. This is comparable to the actions that have been committed by the perpetrator against the child, the child in this crime is not treated as a human resource who has the potential and his personal rights are threatened or deprived because of the perpetrator's actions (Rafferty, 2013). While the modus operandi of this crime can be accompanied by child abuse for example children are beaten, slapped, kicked, and even raped. The consequences of the actions of this perpetrator certainly have an impact on prolonged suffering for children as victims, and can even worsen their mental development. In addition, the child (victim) not only suffers physically but also experiences social psychological suffering (Soekanto, 2014).

Not infrequently it is precisely the social psychological conditions that magnify the suffering of a victim, which although his physical condition can be recovered medically but not infrequently the victims suffer from stress or frustration and experience a lot in their lives. In addition, the victim must also bear the inner burden because in addition to being ostracized, the victim is also the subject of public conversation (Annitto, 2011). The condition of children is so poor due to sexual exploitation, so the child victims of CSEC are entitled to 67okum protection providing legal protection from law enforcement officials, the government and the state to ensure children's rights are still fulfilled / protected. But in reality, in society, the rights of children as victims of CSEC have not been maximally protected.

METHODS

The research method used in this study is "normative juridical with a legal approach (statute approach) and a case approach (case approach), the legal data used is secondary legal data",⁹ which consists of primary legal material, namely laws and regulations on the "Juvenile Criminal Justice System", this study also uses primary legal data, namely legal data sourced from research informants. Other legal materials used are secondary materials in the form of literature related to criminal acts of decency committed by children. The legal material is collected through literature study. After being collected, descriptive analytical analysis is carried out, which is a way of analysis

by describing the object being studied¹⁰. The results of the analysis are then concluded to answer the problems that have been formulated.

RESULTS AND DISCUSSION

Definition of Child Protection Law

Child protection can be distinguished in juridical protection and non-juridical protection. Juridical protection includes protection in :

1. Areas of public law

Field of civil law. Non-juridical protections include: :

- a. Social sphere
- b. Health sector
- c. Education.

Juridical child protection involves all legal rules that have a direct impact on a child's life in the sense of all legal rules that govern a child's life (Geovani et al., 2021).

The following will be described the legal understanding of child protection, among others: legal aspects of child protection, more focused on children's rights which are regulated by law and not obligations, considering that legally (juridically) children have not been burdened with obligations (Annisa, 2020).

Mr. H. de Bie formulated *kinderrecht* (Juvenile Law Aspects) as the overall legal provisions concerning the protection, guidance and justice of children/adolescents, as stipulated in BW, the Code of Civil Procedure. Criminal Code and Criminal Procedure Code and its implementing regulations.

According to Prof. Mr. J. E. Doek and Mr. H. MA. Drewes gives the definition of *jengdrecht* (law of youth protection) in 2 senses, each broad understanding and narrow understanding.

In a broad sense: All the rules of life that give protection to those who are immature and give them the possibility to develop. In a narrow sense: includes legal protection contained in :

1. Civil law provisions (*regels van civiel recht*)
2. Criminal law provisions (*regels van strafrecht*)
3. Procedural law provisions (*procesrechtelijke regels*)

In the Child/Youth Protection Seminar held by Pra Yuwana in 1977, there were two formulations of child protection, namely:

All efforts made consciously by every person and government and private institution aimed at safeguarding, controlling and fulfilling the physical, mental and social welfare of children and adolescents in accordance with their interests and human rights.

All joint efforts made consciously by individuals, families, communities, government and private bodies for the security, procurement and fulfillment of the spiritual and physical welfare of children aged 0-

21 years, not and never married, in accordance with his human rights and interests in order to develop himself as optimally as possible.

According to Law No. 23 of 2002 concerning Child Protection, what is meant by 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 human dignity and dignity, and get protection from violence and discrimination (article 1 point 3 of Law No. 23/2002).

According to Arif Gosita:

That child protection is an effort that supports the implementation of rights and obligations. A child who obtains and maintains the right to grow and develop in life in a balanced and positive manner is treated fairly and protected from adverse threats. Child protection efforts can be legal actions that have legal consequences, thus preventing children from arbitrary parental actions.

Legal protection of children according to the understanding of Barda Nawawi Arief: Legal protection for children can be interpreted as efforts to protect the law against various freedoms and human rights of children (fundamental rights and freedoms of children) and various interests related to child welfare. So the issue of legal protection for children covers a very wide scope.

Understanding Children and Children's Rights

According to Law No. 23 of 2002 concerning Child Protection, a child is a person who is not yet 18 years old, including children who are still in the womb. The understanding of children is prioritized as an understanding of children's rights in order to live, grow, develop and participate optimally in accordance with human dignity and dignity.

The Human Rights Law has regulated the rights of children, the implementation and responsibilities of parents, wild, society, as well as the obligation of the government and state to provide protection to children, but laws and regulations are still needed, especially as a legal basis for the implementation of children's rights. Based on this thinking, Law No. 23 of 2002 concerning Child Protection was issued. The points of child protection in this law are :

1. Chapter 1 verse 1 : a child is a person who is not yet 18 years old including the one who is still in the womb.
2. Article 4 : Every child has the right to live, grow, develop and participate reasonably in accordance with human dignity and dignity and to protection from violence and discrimination.
3. Article 5 : Every child has the right to a name as self-identity and citizenship.
4. Article 6 : Every child has the right to worship according to his religion, think and express according to his intelligence and age under the guidance of parents.
5. Article 7 paragraph 1: Every child has the right to know that his parents are raised and cared for by his parents.
6. Article 7 paragraph 2: abandoned children have the right to be cared for / adopted by others.
7. Article 8 : Every child has the right to health care and Social security according to physical, mental, spiritual needs

8. Article 9 paragraph 1 : Every child has the right to education and instruction in the context of personal development and intelligence in accordance with his interests, talents.
9. Article 9 paragraph 2: children with disabilities are entitled to special education, while children who have excellence are entitled to special education.
10. Article 10 : Every child has the right to express and be heard.
11. Article 11 : Children have the right to rest and take advantage of free time, mingling, playing, creating. . . .
12. Article 12 : Children with disabilities are entitled to rehabilitation, social assistance. . . .
13. Article 13 : Children in the care of parents/guardians/other parties are entitled to protection
14. Article 14 : Children have the right to be taken care of by their own parents unless there is a reason in the interests of the child.
15. Article 15 : Children have the right to protection from political abuse, armed disputes etc.
16. Article 16 : Children have the right to protection from persecution and torture.
17. Chapter 17 : the child who is deprived of his freedom is entitled to humane treatment.
18. Article 18 : Children have the right to legal assistance.
19. Article 20 : States, governments, communities, families, and parents are obligated and responsible for the protection of children.

From the articles mentioned above, there are still several other articles that regulate children's rights. However, from these articles, the implementation in politics of child rights protection policies has received a stronger legal basis because in more detail the rights of children and the obligations to implement have been regulated in such a way in the Child Protection Law, including its criminal provisions.

The State guarantees the protection of children's rights which are human rights and children are buds, potentials and the next generation of young people who are the ideals of the nation's struggle have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future.

The idea that is henceforth usually realized is to pave the way for the possibility of development and increase community participation to take an optimal role in child protection efforts as a manifestation of formal provisions (positive law) and provisions of a non-formal nature as a manifestation of customary law and religious law.

Orphanages should be able to play a role in preparing children physically and mentally to return to society, therefore orphanages should receive reasonable attention, enough professionals, dedicated social workers and skill facilities, so that a system is expected between preliminary alleviation agencies and real alleviation institutions.

Legal Protection of Children as Victims of CSEC

Children as victims of child commercial sexual exploitation (CSEC) based on Law No. 23/2002 receive special protection under article 59 and it is the obligation and responsibility of the

government and society. Special protection for children as victims of commercial sexual exploitation of children is carried out through :

1. Dissemination and/or dissemination of laws and regulations relating to the protection of economically and/or sexually exploited children.
2. Monitoring, reporting and sanctioning.
3. Involvement of various government agencies, companies, trade unions, non-governmental organizations, and communities in the elimination of economic and/or sexual exploitation of children.

According to Article 64 paragraph (3) of Law Number 23 of 2002 concerning Child Protection, special protection for children as victims of criminal acts is carried out through:

1. Rehabilitation efforts, both within the institution and outside the institution;
2. Efforts to protect identity reporting through mass media and to avoid labeling;
3. Providing safety guarantees for victim witnesses and expert witnesses, both physical, mental, and social; and
4. Provide accessibility to obtain information about the development of the case.

According to article 1 of Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, a victim is someone who experiences physical, mental, and/or economic losses caused by a criminal act.

Service to victims of criminal acts is an effort of mental, physical, social, economic service to those who have been victims and suffered due to the actions of someone who is considered a criminal act.

In the event that the victim takes the matter to court, there should be the possibility of obtaining free legal assistance for those who cannot afford it. Meanwhile, for victims who experience physical suffering, facilities must also be available to accommodate their treatment. Especially for those who experience mental distress (victims of rape and molestation) should also be provided with special facilities with expert handling. It should also be noted that in the criminal justice process, the victim's position as a party to the case (rather than just as a witness) must receive a fair recognition.

1. In criminal law theory, the regulation of services to victims of criminal acts is based on 2 models: The Procedural Rights Model, emphasis is given to victims to enable victims to play an active role in the process of criminal justice. In this case, the victim can fight and obtain whatever is rightfully his.
2. The Services Model places emphasis on the need to create official standards for the development of victims of crime that can be used by police and other law enforcement officials. The development of victimology (the study of victims, the causes of victims and the consequences of victim abuse which is a human problem as a social reality) in addition to inviting the public to pay more attention to the position of victims also sorting out the types of victims so that then various types of victims emerged, namely:

- a. Nonparticipating victims, namely those who do not care about crime prevention efforts.
- b. Latent victims, namely those who have certain character traits so that they tend to become victims.
- c. Proactive victims, namely those who stimulate crime.
- d. Participating victims, namely those who with their behavior make it easier for themselves to become victims.
- e. False victims, namely those who become victims because of actions made by themselves.

According to article 5 of Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, victims have the right to:

- a. Obtain protection for the safety of his person, family and property and be free from threats relating to the testimony he will, is and has given.
- b. Participate in the process of selecting and determining forms of security protection and support
- c. Provide unstressed captions
- d. Get a translator
- e. Free from entangled questions
- f. Get information about case progress
- g. Get information about court rulings
- h. Knowing in the event that the convict is released
- i. Get a new identity
- j. Getting a new place of residence
- k. Obtain reimbursement of transportation costs according to needs
- l. Get legal advice
- m. Obtain temporary cost-of-living assistance until the coverage deadline expires

CONCLUSION

Based on Article 59 and Article 64 paragraph (3) of Law Number 23 of 2002 concerning child protection and Article 5 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims, legal protection of children as victims of commercial sexual exploitation of children is carried out through:

Rehabilitation efforts, both within the institution and outside the institution; Efforts to protect identity reporting through mass media and to avoid labeling; Providing safety guarantees for victim witnesses and expert witnesses, both physical, mental, and social; and Provide accessibility to obtain information about the development of the case. Obtain protection for the safety of his person, family and property and be free from threats relating to the testimony he will, is and has given. Participate in the process of selecting and determining forms of security protection and support, Provide unstressed captions, Get a translator, Free from entangled questions, Get information about case progress, Get information about court rulings. Knowing in the event that the convict is released. Get a new identity. Getting a new place of residence. Obtain reimbursement of transportation costs according to needs. Get legal advice. Obtain temporary cost-of-living assistance until the coverage deadline expires

Legal protection of children in general, especially for children as victims of criminal acts should be wider in scope regarding the forms (forms) of legal protection. For reasons of child interest, it is possible for children as victims of criminal acts to be given compensation or education costs as a means for children to take education to a higher level.

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