



Criminal Acts of Sexual Violence Against Biological Children (Case Study at the PPA Unit of the East Lombok Police Criminal Investigation Unit)

Erna Susiawati

Mount Rinjani Selong University. E-mail: ernasusiawat@gmail.com

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ABSTRACT

This study aims to determine the extent of protection provided to children as victims of sexual violence by their families or biological fathers in East Lombok Regency. The analysis that the author does is based on empirical research, seeing how the law actually works in society with an approach to researching the laws and regulations that are used as the basis for legal provisions to analyze this research is empirical legal research that is prescriptive and technical or applied. The research approach uses a law approach and a case approach. The type of research data is secondary data with primary legal materials and secondary legal materials. Data collection techniques in the form of library research and data analysis techniques used are deductive in nature with the syllogistic method. Based on the research, it can be seen that the protection for children as victims of sexual violence by biological fathers has not been maximized as mandated in the Law of the Republic of Indonesia no. 35 of 2014 concerning amendments to Law no. 23 of 2002 concerning child protection. Children who are accompanied by their families tend to be reluctant or refuse the existence of a judicial process for the crimes they have experienced.

1. Introduction

The Unitary State of the Republic of Indonesia is a state based on law, every human life and activity in society is a life activity that must be based on the rules or norms that apply in society. (Nuna & Moonti, 2019). Legal aspects cannot be separated from every movement of human life, because without law it is impossible to imagine what our country will be like in the future? Over time, crime continues to increase and increase in different ways and modes even with increasingly sophisticated and up-to-date equipment, the results of which are increasingly disturbing the public. (Azahary, 2015).

Crime can appear anytime and anywhere, in fact it can be concluded that crime occurs in almost every element of society, but because the impact is detrimental, it is normal for every

community to try and try to anticipate and overcome crime, even though people are fed with news and talk every day. crime themed(Meutia, 2017).

One of the cases that is currently rife in Indonesia is the case of sexual harassment and rape. Violence (violent), harassment (seduction) and sexual exploitation are some of the forms of crime, not only affecting adult women, even underage teenagers (children) and crimes of sexual violence do not only occur in communities such as companies, offices, or in certain places that open up opportunities for humans of different sexes to interact with each other, but it is very possible to occur in the family environment(Nurdiana & Arifin, 2019).

Various kinds of mass media information, both print and more electronic media, nowadays the crime rate shows a tendency to increase, various efforts to reduce crime rates have been applied by countries in the world, as a result, these efforts have little effect in reducing the frequency and frequency of crime(Hot, 2017). In line with that, problems that surface in people's lives in the form of crimes against the physical such as persecution and rape. Crime is an eternal problem in this world, it contradicts and is in line with the development of the increasingly complex level of human civilization. The history of human development is marked by various human efforts to survive or defend their lives, where crime is a phenomenon in an effort to achieve the goals of a group in society or personal goals. Related to the problem of crime, violence is often a complementary object of the crime itself, in fact it has been transformed into a separate feature. The irony of this coercive crime,(Irshad, nd).

Humans, including children, are creatures of God's creation and are classified as social creatures (compound). From the time he is in the womb until he is born into the world, he has the right to live and be independent, to get protection from his parents, family, surrounding community, as well as the nation and state. More than that, children are an inseparable part of the human life cycle and even the life cycle of a nation and state(Masi, Maran, & Anwar, 2021). It is important for every child to have the widest possible opportunity to grow and develop optimally. Be it physically, mentally, especially socially, therefore, it is necessary to protect the welfare of children by guaranteeing the fulfillment of their rights without discrimination. This can be seen in the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection, namely Article 15 which reads: Every child has the right to obtain protection from: Abuse in political activities, Involvement in armed conflicts, Involvement in social unrest, Involvement in events containing elements of violence, Involvement in war; and, Sexual crimes(Indonesia, 2014).

In addition to general rights, children have special rights that must be fulfilled by the Government, Regional Government and other state institutions. This can be seen in the article of the Law of the Republic of Indonesia No. 35 of 2014 Article 59A which reads Special protection for children as referred to in article 59 paragraph (1) is carried out through rapid handling efforts, including physical, psychological, and social treatment and/or rehabilitation, as well as prevention of disease and other health disorders. , Psychosocial assistance during treatment until recovery, Providing social assistance for children who come from underprivileged families; and Providing protection and assistance in every judicial process(Siregar, 2020).

In this regard, the Government seeks to establish an institution/commission for child protection in terms of supervising the implementation of the fulfillment of children's rights, so that the implementation of the Child Protection Law can be carried out properly so that the fulfillment of children's rights can be fulfilled, especially the problem of child sexual crimes which is currently increasing. This happens a lot in the community so that it is necessary to increase the seriousness and attention of the Government, Regional Government, the community, and all stakeholders related to the implementation of child protection.(Arliman, 2018).

2. Method

The type of research used in this thesis is empirical legal research, which is a type of legal research that analyzes and examines the workings of law in society. The operation of law in society can be assessed from the level of legal effectiveness, compliance with the law, the role of legal institutions or institutions in law enforcement, implementation of the rule of law, the influence of legal regulations on certain social problems or vice versa, the influence of legal regulations on the rule of law. The term empirical legal research comes from English, namely empirical legal research, in Dutch it is called empiric juridisch onderzoek, while in German it is called empirische juristische recherche. (Jonaedi Efendi, Johnny Ibrahim, & Se, 2018). One of the meanings of empirical legal research is conveyed by Soerjono Soekanto, they argue that empirical legal research or sociology is legal research carried out by examining primary data. (Ishaq, 2017).

3. Analysis and Results

3.1 Research results from respondents and victims of sexual violence

First, on October 16, 2018 there was a case of sexual harassment by MIR against his son ARJ, who was 12.5 years old, at the address Kelayu Peresak Timur, Kelayu Selatan Village, Selong District, East Lombok Regency. The statement from the victim stated that on Monday, October 15, 2018, the victim was forced to have sex and threatened the victim if she told other people and the next day, the victim went to the bathroom with the intention of urinating but the victim felt pain in his genitals and after When examined by a doctor, it turned out that the child had a torn wound in the victim's neck due to the perpetrator's actions.

Second, on December 11 2018 there was a case of sexual harassment committed by MM, 35 years old, the address is Pengadangan Village, Peringgasela District, Kab. East Lombok to his biological son, ES, 15 years old, the address is Peringgasela Village, East Lombok Regency. The statement from the victim stated that on Saturday, December 10, 2018. The victim was forced to have intercourse by his father who was in the victim's room, at that time Mahli's parents were drunk so the perpetrator or the victim's father forced the victim to serve him.

Third, on May 6, 2019, there was a sexual harassment case carried out by Md, 45 years old, at the address at Gereneng Village, East Sakra District, East Lombok Regency, against a victim with the initials PA, aged 17 years having his address at Gereneng Village, Sakra Timur District, East Lombok Regency. The statement from the victim stated that on Sunday, May 5 2019, at around 14.00 WITA. The victim was forced to have sexual intercourse and threatened the victim so that the victim would not tell other people.

Fourth, on December 21, 2019, there was a sexual harassment case carried out by BP, 42 years old, at Tanjung Luar Village, Keruak District, East Lombok Regency, against the victim on behalf of AA, aged 8 years, having his address at Tanjung Luar Village, Keruak District, East Lombok Regency. The victim's statement stated that on Sunday, December 18 2019, around 11.00 WITA. The victim was forced to have sexual intercourse and threatened the victim not to tell other people.

Fifth, on July 8, 2020, there was a case of sexual harassment by MR, 40 years old, at the address Pandak Bongko, South Sakra Village, East Lombok Regency, against the victim on behalf of EC, 15 years old, the address Pondak Bongko, South Sakra Village, East Lombok Regency. The statement from the victim stated that the victim was forced to have sexual intercourse by the perpetrator who is currently the victim's stepfather, which resulted in the victim becoming pregnant and giving birth to a child from the lewd acts committed by her stepfather.

3.2 The results of the research from interviews with resource persons from the PPA Sat. East Lombok Police Crime Investigation Unit

According to data from the PPA Sat. East Lombok Police Criminal Investigation Unit, during the period from October 16, 2018 to July 8, 2020, there were 18 cases of immoral crimes that occurred in East Lombok Regency. Of the number of cases, most of them are cases that have not been or have not been completed.

Further resource persons from the PPA Sat Unit. The East Lombok Police Criminal Investigation Unit stated that protection for children as victims of sexual violence was only limited to protection as citizens in general. His party cannot provide protection if there is no complaint or there is a complaint but it is unilaterally revoked for reasons of kinship, resignation, not wanting to follow the investigation procedure, etc. Even so, his party will continue to carry out legal procedures as long as the complaint is not withdrawn. From the results of interviews with victims of sexual violence crimes and resource persons from the PPA Sat Unit. East Lombok Police Criminal Investigation Unit above, it can be concluded that:

- a. There are cases of sexual violence (rape) on biological children that are still unresolved.
- b. Most of the victims only reported to the local Police (sector).
- c. There are still many unresolved cases with reasons of shame, not wanting to be bothered with visas, resigning to fate, internal family problems, and so on. And what is more dominant is that the complaint file is revoked by the victim or the victim's relative.
- d. The lack of protection for victims of criminal acts of sexual violence (rape) after the incident or reporting.

Likewise, based on statements from other witnesses and people in rural or remote areas, it turns out that there are still many immoral crimes that occur, but people are reluctant to report them because the mechanism is quite long and the light sentences given to perpetrators of sexual violence crimes. The above is in line with the assessment of Loebby Loqman (Professor of Criminal Law, University of Indonesia). Regarding the crime of rape in general, Loebby Loqman said that: "often the perpetrators of rape are punished lightly, ... The factors of loss and suffering that exist in the victim can be the basis for law enforcement for the crime of rape.

3.3 Analysis of the Elements of a Rape Offense in Article 285 of the Criminal Code

As victims of criminal acts of sexual violence against biological children, children still have the right to protection in accordance with Law no. 23 of 2002. The problem is, in East Lombok Regency, where the level of education is still low, it is coupled with eastern culture which still considers an offense of sexual violence as a disgrace to be covered up, and not resolved in court.

Basically the government, apparatus, institutions, organizations, and others, have tried to provide maximum protection to victims of sexual violence against biological children. And encourage the implementation of justice in accordance with Law No. 35 of 2014 Article 81 paragraph (1) Anyone who violates the provisions as referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine a maximum of Rp.5,000,000,000.00 (five billion rupiah).

Paragraph (2) The criminal provisions as referred to in paragraph (1) also apply to any person who intentionally commits a trick, a series of lies, or persuades a child to have intercourse with him or with another person.

Paragraph (3) In the event that the criminal act as referred to in paragraph (1) is committed by a parent, guardian, child caretaker, educator, or educational staff, the penalty shall be added to 1/3 (one third) of the criminal threat as referred to in paragraph (1). However, this protection chain is broken, for several reasons, including, the victim or the victim's family withdraws their case complaint, the victim is reluctant to follow the long and convoluted judicial process, the case is resolved amicably, and many other reasons. , law enforcement officers will use the principles of criminal procedure law. As for these principles, the first is the principle of isomania or equality before the law, where there must be equal treatment of everyone before the law by not holding differences in treatment.

Second, the principle of legality, namely arrest, detention, search and seizure are only carried out based on written orders by officials authorized by law.

Third, the principle of presumption of innocence, namely the principle of presumption of innocence, in which everyone who is suspected, arrested, detained, prosecuted, and/or brought before a court, must be considered innocent until a court decision declares guilt and obtains permanent legal force.

Fourth, the principle of *contante justitie* or speedy trial/fair trial where justice must be carried out quickly, simply and at low cost as well as free, honest and impartial which must be applied consistently at all levels of the judiciary.

Fifth, the principle of compensation and rehabilitation, where if a person is arrested, detained, prosecuted or tried without a reason based on the law and or because of an error regarding the person or the law applied, they must be given compensation and rehabilitation.

Sixth, every person involved in a case must be given the opportunity to obtain legal assistance which is solely given to carry out the interests of defending himself.

Seventh, to a suspect, from the moment an arrest and/or detention is made, apart from the obligation to be informed, his rights include the right to contact and ask for legal counsel. Eighth, the principle of continuity of court examination (*Onmiddelijheid van het onderzoek*), in which the court examines criminal cases in the presence of the defendant. Ninth, the principle of openness (*Openbaarheid van het proces*), in which court hearings are open to the public except in matters regulated by law. Tenth, supervision of the implementation of court decisions in criminal cases carried out by the head of the district court concerned.

Furthermore, with the law no. 8 of 1981 concerning the Criminal Procedure Code (KUHP) provides a fundamental change in the criminal justice system, in the guidelines for the implementation of the Criminal Procedure Code stating that the criminal justice system prioritizes the protection of human rights where humans or the community can live up to the rights and obligations in the field of The investigation is stated, among others, by guaranteeing the rights of the suspect and proper treatment of the suspect as a legal subject.

Law enforcement officers in treating suspects/defendant must be careful and do not conflict with human rights that have been regulated in the Criminal Code. If the suspect/defendant is sick, the State will treat and treat him until he recovers.

In the evidentiary process for cases of criminal acts of sexual violence or rape, article 285 of the Criminal Code (KUHP) considers that an act is called rape if it fulfills the legal elements that are cumulative, namely (1) the perpetrator, a man who can have sexual intercourse ; (2) the victim, a woman who is not his wife; (3) the presence of violence and threats of violence; (4) intercourse occurs. According to the author, the three aspects above (the process/stage of the case, the principles in criminal procedural law and the evidentiary process), have not accommodated victims of sexual violence or rape to obtain justice.

The first aspect is that in the case process, rape victims will get justice and rape perpetrators detained for criminal sanctions can wait 70 days to 200 days. The litigation procedure, which takes quite a long time and must be passed by the victim, is assessed and felt "complicated" and prolongs the completion of the case and prolongs the suffering of the victim.

The second aspect is that in terms of the principles contained in criminal law, the majority of interests are directed to the rights obtained by the suspect/defendant. The victims are still positioned as victims of other criminal acts (robbery, theft or mugging). Victims of this last crime are generally limited to loss of property, do not suffer from mental and psychological social pressures that are prolonged. So in fact, the victim must also receive protection, especially if the victim is a minor.

In addition, the Criminal Code does not pay attention to victims of crime, especially victims of sexual violence as the most disadvantaged parties, who also need guarantees for

protection of rights that have been violated, this often occurs, the involvement of victims in the criminal justice system only adds to the fear and creates trauma. prolonged, helpless and disappointed because they were not given adequate protection.

The third aspect is in the proving process, that proving whether or not a rape crime has occurred in accordance with Article 285 of the Criminal Code is difficult or has many obstacles. What is often an obstacle or difficulty for rape victims is the presence of witnesses other than the victim's witness. The testimony of the victim's witness will have no meaning if there is no other witness or it is supported by other evidence. This is in accordance with the principle of *unus testis nullus testis*, where the statement of 1 (one) witness is not enough to prove that the defendant is guilty of the act he is accused of, rape cases often occur without witnesses.

Generally, acts of sexual violence occur because of supportive situations and conditions, one of which is the perpetrator and the victim alone. There was no third person at the time of the sexual assault. This makes it difficult to find witnesses to prove that the perpetrator is guilty.

Another obstacle is in the case of sexual violence, where the emphasis on handling the element of "intercourse" is seen as burdensome to the victim and even lightening the perpetrator. In medical forensics, intercourse is defined as an event where there is penetration of the penis into the vagina, the penetration can be complete or incomplete and with or without ejaculation. Although the above formulation has explained the intensity of penetration which allows for incomplete penetration and ejaculation does not have to occur, in most cases, the interpretation of sexual violence or rape still depends on whether there is an anatomical tear in the hymen of the victim or the presence of sperm. of the ejaculation process. If neither of these exists, then the implication is that it will only lead to "attempted rape". This kind of interpretation certainly marks the "holiness" of a woman and the tearing of the hymen is always assumed to have occurred with intercourse.

The difficulty of sperm being evidence is due to the examination that must be carried out no later than 2 days after the incident to determine whether there is sperm in the victim's body.

3.4 Treatment of the needs and rights of children as victims of the crime of rape

"Children who are still dependent are, of course, different from adults in general, who theoretically and practically are no longer qualified as a vulnerable group. In contrast to adults, children are often the targets and victims of criminal acts with long and even permanent repercussions. The impacts that arise from sexual violence include depression, phobias, nightmares, suspicious of others for a long time, limiting oneself to the environment. For rape victims who have experienced severe psychological trauma, it is possible to feel a strong urge to commit suicide."

Moreover, children often suffer from various economic or sexual exploitation, abuse (child abuse), and other rights violations. The scope is widen not only in the public sector such as on the streets, in prisons, but even violence in schools, even more so in their homes or living rooms where they often experience domestic violence. One of them is the crime of sexual violence against biological children. Despite the fact that the offense occurred because of an intentional element, the long process leading to justice makes the perpetrators of the crime feel "protected". On the other hand, children as victims who suffer psychological losses must receive inappropriate treatment. For example, there is intimidation from the perpetrator or the perpetrator's family, being ostracized by the community,

Regardless of their status as victims or perpetrators, children must receive protection from abuse in political activities, involvement in armed conflicts, involvement in social unrest, involvement in events that contain elements of violence, involvement in war. (Law of the Republic of Indonesia Number 23 of 2002: Article 15).

Children also get protection from persecution, torture, and inhumane punishments (Article 16 paragraph (1) of the Republic of Indonesia Law No. 23 of 2002). Therefore, the government as

the payer of the people's rights (in this case children) is obliged to make certain efforts to protect children from acts that are formulated in Law No. 23 of 2002 on Article 16 paragraph (1) of the Republic of Indonesia. So, the realm is the prohibition of positioning children as targets of abuse, torture, and inhumane punishments.

Children who are victims of sexual violence by their biological fathers have the right to receive human treatment, obtain legal assistance, obtain other assistance, defend themselves and obtain justice in an objective, impartial court, and in a trial closed to the public. And children as victims or perpetrators of sexual violence also have the right to keep their identities secret (Article 17 paragraph (2) of Law No. 23 of 2002).

This provision is an affirmation of the legal norms in Law no. 3 of 1997. Article 8 paragraph (5) of Law No. 3 of 1997 stipulates that reporting on children's cases starting from the investigation until the time before the court decision is read uses the abbreviation of the name of the child, parent, guardian, or foster parent.

"Children who are victims of criminal acts of sexual violence by their biological fathers are also entitled to legal aid and other assistance, either as victims or perpetrators of criminal acts." (Law of the Republic of Indonesia No.23 of 2002: Article 18).

In the case of criminal acts of sexual violence against biological children, often what happens is that the child as a victim does not get the maximum protection rights. This indicates that the role of agencies, organizations, or child protection committees, has not actually touched all levels of society.

4. Conclusion

Application of the Law of the Republic of Indonesia No. 35 of 2014 concerning the protection of children as victims of criminal acts of sexual violence (rape) against biological children, has not been accommodated properly. Many factors cause cases to be "capped". Among them are victims who do not want to follow legal procedures that are considered burdensome, long, and long-winded. Moreover, the complaint file at the police was revoked. In East Lombok, protection for victims of sexual violence has not been maximized. The protection provided is only limited to protection for citizens in general. Not yet in accordance with the provisions mandated in Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law N. 23 of 2002 concerning Child Protection. As for the rights that are actually obtained by the child as stated in the Law of the Republic of Indonesia No. 35 of 2014 is that every child has the right to get protection in the education unit from sexual crimes and violence committed by educators, education staff, fellow students, and/or other parties.

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