








Legal Policy Fulfillment of Child Rape Victims' Mental Health Rights

Muhammad Iksan^{1*}, Khudzaifah Dimiyati¹, Fajar Supanto², Natangsa Surbakti¹, Absori Absori¹, Sigit Sapto Nugroho³, Sri Endah Wahyuningsih

¹Department of Law, Universitas Muhammadiyah Surakarta, Surakarta, Indonesia; ²Department of Law, Universitas Sebelas Maret Surakarta, Surakarta, Indonesia; ³Department of Law, Universitas Merdeka Madiun, Madiun, Indonesia

Abstract

BACKGROUND: Legal protection for child rape victims especially mental health rights was a huge problem. It is a manifestation of the human rights that have been regulated in the constitution and laws.

AIM: This research was conducted to search a correct legal policy to fulfil the mental health rights from child rape victims.

METHODS: This research uses the juridical normative method or the doctrinal method. A normative legal method is a legal research that places the law as a building of a norm system about how the law was insufficient to fulfil mental health right for child rape victims.

RESULTS AND DISCUSSION: The fulfilment of mental health rights as a manifestation of restorative justice emphasizes the restoration of the rape victims' rights that have been violated, such as the right to be protected, the right to growth and development, and the right to obtain an education.

CONCLUSION: There are several aspects to this, namely the preventive aspect, the litigation aspect, the therapeutic aspect, and the rehabilitation aspect to fulfil the child rape victims mental health right.

Edited by: Sasho Stoleski
Citation: Iksan M, Dimiyati K, Supanto F, Surbakti N, Absori A, Nugroho SS, Wahyuningsih SE. Legal Policy Fulfillment of Child Rape Victims' Mental Health Rights. Open Access Maced J Med Sci. 2022 Jan 03; 10(E):126-129. https://doi.org/10.3889/oamjms.2022.8144
Keywords: Human rights; Mental health; Children; Restorative justice; Sexual abuse
***Correspondence:** Muhammad Iksan, Department of Law, Universitas Muhammadiyah Surakarta, Surakarta, Indonesia. E-mail: mi214@ums.ac.id
Received: 15-May-2021
Revised: 21-Aug-2021
Accepted: 07-Nov-2021
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Funding: This research did not receive any financial support
Competing interests: The authors have declared that no competing interests exist
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Introduction

Issues of sexual violence to children in Indonesia must obtain more attention, as child victims tend to be ignored [1], though all victims must have their rights protected, as stated in the Republic of Indonesia's 1945 Constitution Article 28 and also its amendment, namely Article 28 G clause (1). It states that "Every person has the right for the protection of the self, the family, the dignity, the honour, and the wealth that are under his/her control, and also the right for a sense of security and protection from threats of fear to do or not to do certain actions and it is a human right [2]."

Article 28 H clause (2) of the 1945 Constitution stipulates that "Every person has the right to be given the ease and special treatment to obtain the same opportunities and benefits to achieve equality and justice."

There is an increasing intensity of violence towards children, causing both physical and mental growth disorders [3]. Child rape victims and their families often do not know what to do due to a lack of knowledge, funds, courage, or hope [4]. They might be reluctant to resolve this issue as some regard rape cases that occurred as "fate." Parents are often ashamed if people know that their children have been raped. Thus, they do not report the issue [5]. Child rape

victims require legal protection and physical, mental, and social health services to handle their suffering. This is a children's right that must be fulfilled by the state [6].

Rape causes psychological impacts, including trauma. It may be caused by the traumatic experience due to sexual abuse, family dynamics, social relations, as well as the negative behaviour of the surrounding people [7]. Subjects experience a rise in awareness and they tend to isolate themselves from society [8].

Fulfilling the right to mental health is part of fulfilling the victims' restitution rights. It accommodates the substantive justice of crime victims and restores their losses. It is the currently developing idea of restorative justice [9].

Based on the description above, the objective research is found how the child rape victims mental health rights through restorative justice and the research problem is, "Restorative justice-based legal protection in fulfilling child rape victims' mental health rights?"

Research Methods

This research uses the juridical normative method or the doctrinal method. A normative legal method

is a legal research that places the law as a building of a norm system about how the law was insufficient to fulfil mental health right for child rape victims. The aforementioned norm system regards principles, norms, values from constitutional regulations, court verdicts, agreements, and also doctrines [10]. Legal materials consist of primary legal materials, secondary legal materials, and non-legal materials especially in the reformation Era. These legal materials are analyzed using the descriptive-qualitative method, using the statute approach and the conceptual approach [11].

Results

The protection dimension

The United Nation's Convention on Children's Rights regards children as subjects who are acknowledged as autonomous and independent beings [12]. Children deserve to be respected and protected. They have the right to grow and develop well as they are mandated by God Almighty [13]. According to the Republic of Indonesia's Law No. 23 of 2002 that is amended into Law No. 35 of 2014 on Child Protection, children are people who are not yet 18 years of age, including those still in the womb.

Basically, children's rights are human rights. The Convention on Children' Rights contains two articles on the rights of children as victims. There need to be special treatment for children as stated in the Geneva Declaration on Children's Rights in 1924. Article 39 regulates the rights of children as victims, especially to victims of severe abuse [14]. This article regulates that the state members must take steps to encourage physical, psychological, and social integration recoveries of children who are victims of all kinds of negligence, exploitation or abuse, torture or other forms of cruelty, inhumane behaviour and insults or armed conflicts. Recovery and reintegration should happen in environments that support the health, dignity, and honour of children [15]. In reality, in the positive criminal laws that currently apply, victim protection tends to be abstract or indirect [16].

The previous research results that initially, victims will have difficulties being overt. The rape case is often kept as a secret, as sexual abuse is often regarded as a disgrace to the family. Because of that, the children who are sexual abuse victims must be assisted, as it is categorized as a violation of human rights [17]. All of this was found by the previous research, and thus the mental health right of the victims wouldn't fulfilled especially if the victim was a child.

The sexual abuse victims urgently require rehabilitation, as the crime that occurred to them cause trauma, even though the victims and the family do not

speak up about the experience. Law No. 23 of 2002 on Child Protection Articles 64-65 stipulates that children who are victims of criminal actions have the right to obtain physical, mental, spiritual, and social rehabilitation from the government. Apart from that, their privacy must be protected. Their names must be confidential and their safety must be guaranteed. Also, they have the right to information on the development of the case. Law No. 39 of 1999 on Human Rights state that rehabilitation should be provided to all victims of criminal actions who require physical and mental recovery [18].

From the description above, it can be understood that sexual abuse is an intended action that harms children. Umar stated that "Discussing human sexual issues is not as simple as it seems, or it is not as how society understands it. This shows that human sexuality (lust) is a threat to other humans (predator) if it is not controlled [17]."

Basically, Islam normatively appreciates sexuality as a nature of both men and women that must be managed healthily. It believes that sex is a blessing from God, thus, it must be fulfilled through ways that are according to Islamic law. Restrictions on sexual behaviour may cause social and psychological crises [19].

Based on the perpetrator's identity, sexual abuse may be categorized into: (1) Familial abuse, namely that carried out by people with blood relations. Sexual abuse that is carried out by parental substitutes, such as stepfather or stepmother, boyfriend or girlfriend of a parent, and babysitters are included in the definition of incest. (2) Extrafamilial abuse, namely that carried out by people other than the victim's family. In this type of sexual abuse, the perpetrator is usually an adult that is well-known by the child. The perpetrator may persuade the child by giving them certain rewards [20]. These two types of sexual abuse often happen in many regions in Indonesia.

Sexual abuse to children may be perceived from biological and social perspectives, and both impact their mental health. Biologically, before puberty, a child's vital organs are not ready for sex. Thus, sexual intercourse will damage bodily tissues and physical damage is a violent action. Then, in the sociological perspective, as the perpetrator does not want others to know of the coerced sexual action, the perpetrator makes efforts to make the child keep it a secret. It is carried out by intimidating the child. When the child is threatened, naturally, the child's body will become defensive. When the child's body biologically refuses the coerced action, a paedophile will cause more harm to the child. This is an act of violence. The pain and the threats will traumatize the child. But to talk about it, the child fears the intimidation and threats from the perpetrator. Thus, the pain and intimidation become psychological violence to the children [20].

In Indonesian law, there is no special stipulation on the age limit of when a person is categorized as an adult. Each regulation has its own criteria for the

definition of a child. Based on several studies, the majority of sexual abuse victims are children between 10 and 18 years old [17]. This concerns some parties. Thus, they provide assistance or rehabilitation, to prevent further psychological harm to child rape victims or their environment. Article 1 clause (2) of Law No. 35 of 2014 states that "Child protection is all activities to secure and to protect children and their rights so that they may live, grow, develop, and participate optimally based on humane honour and dignity so that they are protected from violence and discrimination."

Law No. 35 of 2014 states Article 69A explains that special protection for children who are sexual abuse victims as stated in Article 59 clause (2) letter j is carried out through the efforts of: (a) education on reproductive health, religious and moral values; (b) social rehabilitation; (c) psychosocial assistance from the treatment to recovery; and (d) providing protection and assistance at all levels of inspection, starting from the investigation, prosecution, up to inspection in court trials.

This article emphasizes the importance of rehabilitation for sexual crime victims, as they need physical and mental recovery. Law No. 21 of 2007 on the Eradication of the Crime of Human Trafficking Article 1 number 14 defines rehabilitation as, "Recovery from damages to the physical, psychological, and social conditions, so that the victims may normally return to their roles within their family or society."

Rehabilitation is provided so that victims of sexual abuse may be perfectly recovered. According to Article 35 clause (2) of the Republic of Indonesia's Governmental Decree No. 40 of 2011 on the Guidance, Assistance, and Recovery for Children as Perpetrators or Victims of Pornography, social rehabilitation is provided in the forms of: (a) Psychosocial motivation and diagnosis; (b) Treatment and care; (c) Vocational training and entrepreneurship guidance; (d) Spiritual mental guidance; (e) Physical guidance; (f) Social guidance and psychosocial counselling; (g) Accessibility services; (h) Social aid and assistance, etc.

Fulfilling mental health rights

There is a discourse on castration as an alternative criminal sanction to child rape perpetrators [21]. It is hoped to give perpetrators a deterrent effect as well as to provide an equal sense of justice to children as victims. But many groups oppose this sanction, as it is deemed as a violation of human rights. The government should accommodate additional sanctions and psychologically treat perpetrators while serving their punishment to refrain them from carrying out further sexual crimes. The government must recover the victims' and provide them with medical and psychological services [22].

Some experts state that if the resolution of sexual abuse or rape only depends on positive law, the rape victims cannot obtain the aspect of benefit in the

implementation of that law [23]. This is because, in that criminal action, the rape victims are the most socially and psychologically disadvantaged. They may even suffer their whole life. Thus, it is crucial to recover their violated rights.

The convention on children's rights have stated the following principles: (1) non-discrimination; (2) the best interest of children; (3) the right to live, the rights for livelihood and development; (4) Appreciation to children's opinions [24].

Based on the research results, child sexual abuse or rape is against the basic principle of the Convention on Children's Rights, especially concerning their basic rights (the right to live, the rights for livelihood and development). Socially and psychologically, children who were raped are different from those who were not. This is due to the trauma that they must deal with for the rest of their lives. Essentially, neither legal guidance nor protection will return the victims' violated rights, but it may ease psychological suffering [25]. Thus, the government has substantially provided special protection through Law No. 35 of 2014 on the Change of Law No. 23 of 2002 on Child Protection.

To achieve restorative justice to child rape victims, some of the aspects of benefit are as follows: (1) Preventive aspect, this shows how the family, society, and the state have a role in synergizing to prevent sexual abuse or rape, (2) Litigation aspect, the legal efforts carried out to the victims in the courtly processes, (3) Therapeutic aspect, which aims to decrease or even to eradicate the victims' suffering, and (4) Rehabilitation aspect, to prepare the victims physically, mentally, and socially for their lives in the future. The perpetrators should also be rehabilitated, to prevent them from doing further criminal actions.

Discussion

Based on the description above, it can be understood that the effort to achieve restorative justice to the rape victims are inseparable from the mandate of the constitutional regulations. This means that child protection has nationally had juridical bases, including the 1945 Constitution as the constitutional basis, Law No. 39 of 1999 on Human Rights, Law No. 31 of 2014 on the Change of Law No. 13 of 2006 on the Protection of Witnesses and Victims, Law No. 35 of 2014 on the Change of Law N. 23 of 2002 on Child Protection, which stipulates that rape victims have the right to receive physical, mental, spiritual, and social rehabilitation.

Thus, in the context of restorative justice, the damaged conditions of victims, perpetrators, and society due to the criminal action must be recovered. This is based on the thought that restorative justice is an approach to resolve criminal issues between various parties – namely victims, perpetrators, and society – in an active relation

with the law-enforcing apparatus [26]. In resolving these issues, restorative justice uses these assumptions: (a) the sources of crime are social conditions and relations in society; (b) Crime prevention depends on social responsibilities (including the local and central governments and their social policies in general) to handle the social conditions that may cause criminal actions to happen; (c) The interests of parties in resolving criminal cases cannot be accommodated without the provision of facilities to make personal involvement happen; (d) The measure of justice must be flexible to respond to important facts, personal needs, and resolution of every case; (e) Cooperation within the law enforcing apparatus as well as between the apparatus and society are crucial to optimize case resolution; (f) Justice is achieved with the principle of balance between the interests of all parties [27].

Thus, it can be said that restorative justice is an effort to protect human rights. Restoration is carried out so that a better society may be developed in the future. Restorative justice is principally an approach to systematically respond to the criminal actions that happen, with the main focus to repair damages or to recover sufferings and by balancing attention on the interests of the victims, perpetrators, and society. These principles of restorative justice show that sanctions or forms of the perpetrators' responsibility that orients to recover or to rehabilitate the victims' suffering or losses due to rape may obtain a place in the perspectives of restorative justice and the justice principles that apply in society as stipulated in Pancasila (the Indonesian ideology that contains five principles).

Conclusion

Legal protection for child rape victims is an obligation of the state as part of human rights protection. This is especially important to fulfil the rights for mental health due to the trauma caused by sexual crime that they may feel for the rest of their lives. To achieve restorative justice for children as rape victims, it is not enough to depend on the positive law. There must be special emphasis on recovering the rape victims' violated rights, such as the rights for protection, growth and development, and education at the preventive, litigation, therapeutic, and rehabilitation aspects.

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