

An Inquiry for Indonesia' Commitment in Preventing Sexual Violence against Children

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ABSTRACT

This study aims to analyze Indonesia's commitment as a state party to the United Nations Convention on the Rights of the Child regarding policy making through regulations and its implementations, also facts related to data on sexual violence against children in Indonesia. The method used is a normative research method. The result of the study shows that Indonesia's commitment as a state party in terms of protecting children from sexual violence is experiencing difficulties. Based on Friedman's theory on legal effectiveness, the difficulty in tackling the case in Indonesia which continues to increase every year due to the three elements of legal effectiveness cannot be achieved..

Keywords: Sexual violation, children protection, Indonesia

1. INTRODUCTION

The existence of children as the young generation, as well as a future leaders, also as the expectance of previous generations, they need to get widest opportunity to grow and to develop properly, both spiritually, physically and socially (Nursariani Simatupang and Faisal, 2018). Plentiful situation can pose a threat to a child's survival, from the lack of quality education to violence against them. In line with that, sociologically, crimes or violence committed against children are not only very detrimental to the sufferer, but also to society likely loss of balance, peace and order.

The phenomenon of sexual violence against children is increasingly common and has become global in almost all countries even more tragically, the perpetrators are mostly from the family or the environment around them, including in their own homes, schools,

educational institutions, and the child's social environment.

In general, sexual violence is all kinds of behavior that connotes or leads to sexual things that are carried out unilaterally and are not expected by the person being targeted, causing negative reactions such as shame, anger, hatred, offence, and so on in the individual who becomes the target or victims of the abuse.¹ Sexual violence against children include sexual abuse, rape, sexual slavery, sexual exploitation, forced pregnancy and others.

The condition where sexual violence against children in Indonesia is increasing year by year requires special attention from the Government of Indonesia, one of which is by becoming a state party to the children convention. On September 5, 1990 through Presidential Decree Number 36 of 1990 the Convention was ratified by the Indonesian Government.

Approximately 31 years Indonesia is bound by the convention. A series of National Laws were also issued, such as Law Number 23 of 2002 on Child Protection as amended and refined by Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection. Law Number 17 of 2016 on Stipulation of Regulations in lieu of Law (Perppu) Number 1 of 2016 on the Second Amendment of Law 23 of 2002 on Child Protection into Law, and Government Regulation Number 59 of 2019 on the Implementation of Coordination of Child Protection. All of these regulations are *lex specialis* which are used to prevent violence against children.

It is a fact that sexual violence against children in Indonesia continues to increase. According to the Child Protection Task Force, Indonesia is currently experiencing an emergency situation of violence

against children. Indonesia has a "mountain" pile of cases related to children's problems. Based on the data, there are thousands of cases of violence against children in Indonesia every year. Furthermore, based on data from the Ministry of Women's Empowerment and Child Protection (Kemen PPPA), from January to July 31, 2020 there were 4,116 cases of violence against children in Indonesia. From the total number, 2,556 are victims of sexual violence, meaning that around 62 percent are sexual violence against children cases.

In several cases, sexual violence experienced by children and reported to the authorities did not get clarity, in some cases the investigation process was stopped. For example, a case occurred in Luwu Regency, South Sulawesi, where a father raped his 3 biological children. The investigation was stopped because the perpetrator is a person who has power in the regional government. Then, that case reinvestigate after a scene on social media and get pressure from the public.

Another case unless exciting is when a perpetrator of sexual violence against children was released, which was greeted by certain parties with a warm welcome and hailed with a reason that the perpetrator had served a criminal. The response that some children's human rights activists and the community consider inappropriate and definitely rack the victim.

Assuredly, such a fact must immediately find a solution, considering that children future of nation that must be protected. Protection for children is based on the protection of human dignity from the moment they are born into the world. This is the main principle in the protection of human rights, both international human rights and Indonesian national human rights.

In addition, Indonesia is a state that is bound by the convention on children, thus normatively, especially based on the principle of *pacta sunt servanda*, provisions for the protection of children from sexual violence are required to be pursued in any way by Indonesian government. Therefore, this research addressed to inquire about Indonesia's commitment as a ratifying country to the convention on children, related to the legal policies adopted in terms of preventing sexual violence against children in Indonesia.

2. Research Method

This research used the Doctrinal/Normative legal

research method, namely legal research that examines written law from various aspects, as follows aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation and article by article, formality and binding force of law, as well as the legal languages. In conducting data analysis, this study used a legal exploration and legal review approach. Legal exploration is to examine the legal substance with legal logic, while legal review is descriptive type in revealing the weaknesses, shortcomings, and advantages of a law or regulation under this research.

3. Discussion

The awareness about importance of protecting and fulfilling children's rights had emerged in the minds of stakeholders around the world since decades ago. That concern caused the member states of the United Nations (UN) to later formulate an international agreement, a universal rule, which can be a guideline in the protection and fulfillment of children's rights.

After going through various meetings, the UN General Assembly stipulated the Convention on the Rights of the Child on November 20, 1989. Currently, the day well known as World Children's Day. It did not take long time for the Indonesian people to agree on the Convention on the Rights of the Child. Then, on January 26, 1990, Indonesia became one of the countries signed the convention. It didn't stop there, in the President of Suharto's era, the Convention was ratified on September 5, 1990 through Presidential Decree Number 36 of 1990.

In the period of 31 years that Indonesia has become a party to the children's convention, the dynamics of protecting children, especially the prevention of sexual violence that overshadows Indonesian children, have experienced plenty of challenges. Even if based on data, every year there is an increase, it can be said that law enforcement actions on provisions of the convention have not been taken in a maximum way.

There are several factors influence the success of law enforcement, Soerjono Soekanto suggests there are at least 5 factors, namely: *a) Legal factors (law itself). b) Law enforcement factors in carrying out the duties of law enforcers. c) Factors of facilities that support law enforcement. d) Community factors, namely the environment in which the law applied. e) Cultural factors as a result of work, creativity and taste based on human initiative in social life.*

In line with that, in the legal effectiveness theory stated by Lawrence M. Friedman, the success of law enforcement depends on three elements, namely the legal structure, legal substance and legal culture. In simple terms, regarding law enforcement effectiveness in Indonesia, based on three things are the availability of regulations, law enforcement, and the legal culture that lives in society.

Sejak diratifikasinya Konvensi anak di Tahun 1990, beberapa peraturan perundang-undangan di Indonesia mengadopsi ketentuan perlindungan dalam konvensi tersebut.

The Availability of Regulation

In Indonesia, in fact, since 1979 the government has set a regulation to place children in a fairly safe protection institution is Law Number 4 of 1979 on Child Welfare which expressly formulates, every child has the right to care and protection from the time in the womb until they were born.

In the children's convention a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. In the convention also regulated the obligation of state party. According to Article 19 States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Furthermore in the convention affirmed to state parties to take a step measures for preventing sexual violence against children. Article 34 stated that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- b) The exploitative use of children in prostitution or other unlawful sexual practices;
- c) The exploitative use of children in pornographic performances and materials.

Several articles in the convention emphasize the active role of state party to take firm steps in efforts to protect children from all forms of sexual violence in their country. Normatively, Indonesia as a state party is obliged to comply with this provision. One of them is implemented through laws as a basis for taking further protection policies. Within a period of 31 years after ratification of the Convention, several laws and regulations in Indonesia which are broadly intended to provide protection, one of which aims to prevent the occurrence of sexual violence against children which is increasing every year.

Law Number 39 of 1999 on Human Rights also explicitly recognizes the existence of children. In this law, a child is every human being who is under 18 (eighteen) years old and unmarried, including a children who is still in the womb if this is in their interest.

Furthermore, Article 52 Paragraph 1 stipulates that the protection of children must be carried out by parents, families, communities and the state. Meanwhile, Article 58 Paragraph 1 provides guarantees for every child to get legal protection from all forms of physical or mental violence, neglect, ill treatment, and sexual harassment while in the care of their parents or guardians, or other parties who are responsible for children's care.

Sexual violence is a crime that really gets special attention in terms of child protection. This is clearly seen in Article 15 of this law which provides firmness that every child has the right to get protection from sexual crimes, due to increasing number of sexual violence crimes that befall children in Indonesia, because children are easy to be threatened and hurt by criminals. Also considering children are unable to fight or protect themselves against the dangers.

These sexual activities include seeing, touching, penetration (pressure), sexual abuse and rape. The impact of sexual violence on children can be physical, psychological, or social. Physical impact can be in the form of wounds or tears on the hymen. Psychological impacts include mental trauma, fear, shame, anxiety and even suicidal ideation or attempts. Social impacts such as cynical treatment from society, fear of being involved in socializing and so on.²

The legislators, through legislation (positive law), such as the Criminal Code (KUHP), Law no. 23 of 2002 as amended by Law Number 35 of 2014 on Amendments

to Law Number 23 of 2002 on concerning Child Protection, Law No. 23 of 2004 on the Elimination of Domestic Violence (KDRT), and Law Number 11 of 2012 on the Juvenile Criminal Justice System which absolutely provides various forms of legal protection related to protecting children against sexual violence.

The form of child protection provided by the Law of children protection and law on the Elimination of Domestic Violence and the Child Criminal Justice System is the adoption, compilation, or reformulation of forms of child protection have been regulated in the Criminal Code.

Furthermore, mandate of the Law on Child Protection Number 23 of 2002. In Article 59 which states that the Government and other state institutions are obliged and responsible for providing special protection to children in emergency situations, children in conflict with the law, children from minority and isolated groups, economically and/sexually exploited children, trafficked children, children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances, children who are victims of kidnapping, selling and trafficking, children who are victims of physical and mental violence, children with disabilities, and children who are victims of abuse and neglect.

Then child protection is regulated in Law No. 24 of 2003 concerning the Elimination of Domestic Violence (KDRT). The Domestic Violence Law is a form of positive Indonesian legal legislation in which it regulates the elimination of domestic violence, one of which is to provide protection for children.

Law Enforcement

Law enforcement aimed to improving order and legal certainty in society, by controlling the functions, duties and authorities of the institutions tasked with enforcing the law according to the proportions of their respective scopes, and based on a good cooperation system that supports the goals to be achieved.³

The law implementation in society, not only depend on legal awareness, but also determined by law enforcement officers, it often happens, some legal regulations cannot be implemented properly because there are several law enforcers do not carry out a legal

provision as it should. This is due to law enforcement implementation itself is inappropriate, appear unsavory model that can degrade the image. In addition, the integrity and morality of law enforcement officers must absolutely be proper, because they are very vulnerable and open to opportunities for bribery and abuse of authority. It can not be denied, nowadays, money can affect investigation process, prosecution process and decision handed down.

In the modern state structure, the task of law enforcement is carried out by judicial component and by bureaucracy, oftentimes it called law enforcement bureaucracy. The executive and its bureaucracy are part of chain to realize every plans stated in the law (regulations). Judicial freedom is state of law essence, now it has been realized, where judicial power is independent or free from imoression of executive, legislative elements, and freedom of the judiciary determines the stateness affairs, and whether or not the principle of rule of law is enforced.

Several cases show that there is no common perception among investigators, prosecutors and judges, in handling cases concerning the protection of children against acts of sexual violence. Over three regulations, there are differences between the penalties imposed by the Criminal Code, the Child Protection Law, and the Anti-Domestic Violence Law. Law enforcers also more often refer to the Law (KUHP) rather than using the Child Protection Law, instead the Law was held with the aim of ensuring the fulfillment of children's rights, so that they can live comfortably. In sum, the law better than the Criminal Code in order to protect the children from sexual violation.

Therefore, with the enactment of Law Number 23 of 2002 concerning Child Protection which was then amended by Law Number 35 of 2014 it developed as at its age, and optimally participated in accordance with human dignity, protection from violence and discrimination.

INFID-IJRS still finds law enforcement officers who do not acknowledge or do not allow the presence of a victim's companion during the legal process. In fact, the right to a companion has been guaranteed in various laws and regulations, such as the Law on the Elimination of Domestic Violence (KDRT), the Law on the Juvenile Criminal Justice System, or the Supreme Court Regulation no. 3 of 2017 concerning

Guidelines for Adjudicating Women's Cases in Conflict with the Law. Companion has a significant role; the presence of a companion facilitates the trial process, supports the courage of victim, so that the victim feels more confident in stressful legal process and trial.

The assistants in question are not only related to legal assistance but also non-legal assistance such as families, psychologists, psychiatrists, women and children assistance service center officers, translators, and trusted people.

there are other problems such as difficulty in proving law enforcement officers and difficulties in bringing victims to trial; narrow interpretation in legislation; and not yet optimal implementation of laws. All of these problems indicate the weakness of law enforcement in Indonesia, especially in cases of sexual violence.⁵

Legal Culture of Society

The cultural component is values and attitudes bind the legal system together and produce a form of law enforcement in culture of society as a whole. It means, the cultural component plays a very important role in law enforcement.⁶

Naturally, the level of law enforcement in a society is very high because it supported by its community culture, for example through very high public participation in efforts to prevent crime, report and make complaints on the occurrence of crimes in their environment and cooperate with the authorities in order to prevent a crime, even though, the structural and substance components are not very good and the public does not even want the formal procedures to be implemented properly.⁷

Otherwise, a component of structure and substance is modern, in reality it does not always produce high law enforcement output, because the culture of society does not support the formal procedures been established. Whereas law enforcement will always interact and interrelate with the social environment. The implementation of law enforcement will be able to achieve the objectives as determined through working processes function in society, namely social, political, economic, and cultural forces.

Therefore, in discussing legal culture, it cannot be separated from state of society, the system and structure of society contains the legal culture. Legal culture is a response which acceptance or rejection of a legal event. It shows the attitude of human behavior towards legal issues and legal events are carried over into society.

Types of legal culture can be grouped into three forms of human behavior in people's lives ⁸ are: 1) parochial culture, 2) subject culture, 3) participant culture. In the subject culture community, the way of thinking of community members has been paid attention, there has been a general legal awareness of the output of higher authorities. There is very little input from the community or none at all. This is because the knowledge, experience and association of community members is still limited and fearness of threats from the authorities.

The orientation of their views on new legal aspects already exists, there is an attitude of acceptance or rejection, even though method of disclosure is passive, not overt or still hidden. This type of self-conquering society considers itself powerless to influence, let alone trying to change the legal system norms that faces, although they feel it is contrary to their personal and community interests.

In participatory (participating) cultural societies, the ways of thinking and behaving of community members are different. Some are still in a culture of submission, otherwise feel, they have right and obligation to participate because they are part of the general legal life. Here the community already understand they have equal position, rights and obligations in law and government. He does not want to be excluded from the activities of responding to legal inputs and outputs, participating in assessing every legal and judicial event, feeling involved in legal life both in the public interest and in the interests of his family and himself.

Usually in such a society, the knowledge and experience of its members is already extensive, there are already associations of organizations, both of independent and have relationships with other regions, with a model from top to bottom.

In Indonesia, people tend to subject culture. The majority of them do not report the violence they experience to law enforcement. In addition, those who

report, still have to face discrimination in the judiciary.

According to reports from the International NGO Forum on Indonesian Development (INFID) – a civil society organization that focuses on advocacy for development policies – and the Indonesia Judicial Research Society (IJSRS) which focuses on legal advocacy, in cases of sexual violence, the majority of victims do not report for reasons of fear, feeling guilt and shame.

In various cases of sexual violence, most of the victims did not get a case resolution. The case is actually resolved by the perpetrator paying a sum of money to the victim, the perpetrator makes a peace agreement with the victim.

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5. Conclusion

Indonesia's commitment as a party to the children's convention has not yet reached its maximum stage. the problem is not in the availability of regulations, but in the substance of existing regulations such as different sanctions between laws. In addition, there is a lack of uniform understanding of law enforcers in resolving cases of sexual violence against children in Indonesia in terms of reference to the laws and regulations used in resolving cases. This phenomenon is being exacerbated by the legal culture of the community, which considers sexual violence against children a taboo subject to be disclosed to the public. Thus, many victims or their families choose not to report

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