

URGENCY OF THE RENEWAL OF CRIMINAL LAW POLICIES IN AN EFFORT TO PROTECT CHILD VICTIMS OF SEXUAL VIOLENCE

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Abstract

Protection efforts for children who are victims of sexual violence must be carried out ongoing so that their welfare is maintained, because children are important assets for the progress of a nation and the country. One protection of children by overcoming crime or violence by giving punishment in a criminal form to irresponsible parties. Determination of the type of punishment and how to apply is very relating to criminal law policies. Criminal law policy is a systemic process in the reduction in criminal actions using criminal law facilities, including the renewal of criminal law. Law enforcement is carried out through a criminal justice system involving police, prosecutors, courts, and correctional institutions. Interaction between subsystems in this system can affect the implementation of their respective duties. In addition, if it is associated with the three legal systems (substance, structure, and legal culture) In addition, it can play a role directly or indirectly to law enforcement officials, which ultimately affect legal protection for child victims of sexual violence.

Keywords: *Urgency of renewal, criminal law policy, legal protection, child victims of sexual violence.*

1. INTRODUCTION

The efforts of child protection victims of sexual violence must continue to be carried out to maintain the welfare of children as the next generation of nations and countries. One of its efforts is through the control of violence or crime by giving punishment in a criminal form in accordance with criminal law policy. Criminal law policy is a policy that regulates and controls community behavior through the criminal justice system to prevent and overcome crime. Barda Nawawi Arief stated that the use of criminal law as a means of dealing with crime or criminal acts must be carried out in a structured. This process involves enforcing criminal law in broad coverage, which is carried out through several stages of the following policies:¹

- a) The formulation stage is a process in which criminal law is formulated conceptually by the Legislative Body, or known as the legislative policy stage.
- b) The application stage includes the application of criminal law carried out by law enforcement officials, which is also called the Judicative Policy Stage.
- c) The execution stage is the implementation of criminal penalties by implementing apparatus, and often referred to as executive or administrative policy phases.

The stage of the formulation of the policy is the initial foundation for the application stage and execution in handling crime. In addition, criminal law policies also include legal reform (Reform Pet) which are adjusted to important values in the social, political, philosophical and cultural side. This renewal involves the process of formulation, application, and execution using penal facilities, so that there will be a criminalization of an act that will be updated. According to Soerjono Soekanto, the criminalization was the determination of an act that was previously not being sentenced to a crime by the ruler.² Whereas according to Paul Cornill, criminalization also includes an increase or change for existing criminal sanctions.³

¹ Barda Nawawi Arief, (1998), *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, (Bandung: Citra Aditya Bakti), hlm. 115

² Soerjono Soekanto, (1981), *Kriminologi: Suatu Pengantar*, Cetakan Pertama, (Jakarta: Ghalia Indonesia), hlm. 62.

³ Salman Luthan, Asas Dan Kriteria Kriminalisasi, Jurnal Hukum No. 1 Vo. 16 Januari 2009, hlm. 1 – 17.

Criminalization is based on the three main theories in *pemudaan*, namely the theory of absolute (retributive), relative theory or community protection (utilitarian), and combination theory. At present, there is a paradigm shift towards the concept of restorative justice. The criminal giving of sexual violence aims to prevent the occurrence of the occurrence of the violence and protect the rights of the victims, especially children. Lawrence M. Friedman in his study of criminal law as part of a legal system stated that there were three main components that determine the course of the law, namely the legal substance, legal structure, and legal culture. According to Friedman, analysis of legal work as a system can only be done by understanding these three components.⁴ Law enforcement by the criminal justice system of sexual crimes is seen from the impact it is quite worrying so as urging the government to overcome it appropriately and correctly. These enforcement Mules of the criminalization process and the process of disclosing cases of sexual crimes to punish and apply sanctions for the culprit, and no less important to provide protection for victims of the crime.

Enforcement of criminal law is an attempt to implement or implement legal rules that have been set in laws and regulations. The law does not have meaning without enforcement by the apparatus and support from the community. In fact, even though without clear legal substances, the law can still be formed because of the task of the judge in creating the law.⁵ The success of law enforcers is very dependent on the formulation of the legal regulations from the start. The criminal law enforcement process is a series of examinations that take place in the criminal justice system, which involves the police, prosecutors, courts, and correctional institutions. This system is administratively in itself in accordance with the law, but the existence of this system is in a large system in which the system or other sub-sub-sub-systems are affected by the system or other sub-systems. Sub-systems in criminal justice can be influenced by external systems in the community and by internal subsystems related institutions. In addition, the structure, substance, and legal culture also affected law enforcement officials who had an impact on the protection of children victims of sexual violence.

From the background description, it is important to analyze further regarding the urgency of the renewal of criminal law policies in an effort to protect children victims of sexual violence? In line with the formulation of a careful problem, the purpose of this study is to analyze how important it is reformed by criminal law policies in an effort to protect children victims of sexual violence. Besides that, in this study, it is hoped that it is expected to be able to contribute either the theory to the SPIPIM for legal and practical science to legal practitioners.

2. RESEARCH METHODOLOGY

To immerse the above legal issues so that in this discussion it will use the type of normative legal research carried out through library studies by utilizing secondary data sources, which include primary, secondary and tertiary legal materials. The data collected will later be managed using qualitative analysis methods, and will be presented in a systematic form by describing the relationship between various types of data, and descriptively explained that not only describe the conditions or phenomena at mere positive and empirical legal levels, but research It is also expected to extend the right legal issues and identify the solution so that it can be drawn conclusions in this discussion.⁶

3. RESULTS AND DISCUSSION

The criminal law enforcement process are a series of examinations carried out through the criminal justice system, which involves various institutions such as police, prosecutors, courts and correctional institutions. This system is administratively administratively individually in accordance with the law, but the existence of this system is in a large system where other sub-sub-systems are affected by other sub-system sub-systems. In the process of enforcing criminal law, there are several agencies or institutions that act as sub-systems in the overall criminal justice system. In addition, the performance of the sub-system can be influenced by internal factors that come from each institution or agency itself.⁷ Furthermore, if it is associated with three legal systems (substances, structures, and culture) all three can have a good or indirect effect on the implementation of criminal law enforcement, which in the end will also have an impact on the implementation of legal protection against children who are victims of sexual violence.

⁴ Lawrence Friedman, (2001), *American Law at Introduction, Second Edition*, Terjemahan Wishnu Basuki, (Jakarta: Tatanusa) hlm. 10;

⁵ Antonius Sujuta, (2000), *Reformasi Dalam Penegakan Hukum*, (Jakarta: Djambatan), hlm. 7.

⁶ Syaiful Asmi Hasibuan, dkk., Analisis Hukum Terhadap Pengenyampingan Pertanggungjawaban Pidana Anak Melalui Penerapan Restorative Justice di Tingkat Penyidikan, *Jurnal Warta Dharmawangsa* Vol. 16 No. 3 Juli 2022, hal. 418.

⁷ Hamdan, M., dan Mahmud Mulyadi, (2017), *Tindak Pidana Kesusilaan & Tindakan Kebiri Kimia*, (Medan: USU Press), hlm. 72.

Lawrence M. Friedman states that substance is composed of substantive rules and rules about how institutions should behave.⁸ In efforts to uncover criminal acts, the approach used so far has been more offender-oriented, so attention to victims is often neglected. In fact, in some cases, the role of the victim is very crucial in the process of revealing criminal acts. Therefore, the view that considers victims only as witnesses or the perspective that punishing the offender is sufficient to protect the victim must be changed for more effective legal protection. The positive law that has been used in Indonesia so far is law inherited from the colonial era, which is still oriented towards pressure on suspects or witnesses.

Although the government has made efforts to ensure that witnesses and victims have the right to receive protection for their personal safety, both from physical and psychological threats, as well as other rights including giving testimony without pressure, obtaining legal advice, and receiving reimbursement for transportation costs,⁹ related to testimony that will be, is being, or has been given in a criminal case. The witness and victim protection law has not clearly explained whether these rights apply to all witnesses in criminal cases or only to witnesses who face threats or are protected by the Witness and Victim Protection Agency (LPSK). This issue can be resolved if the law explicitly distinguishes between the basic rights held by all witnesses in the judicial process and the special rights for witnesses who face threats or intimidation.

If these rights are granted without exception to all witnesses, the greatest burden will fall on the Witness and Victim Protection Agency (LPSK). Conversely, if the rights are only given to witnesses who experience intimidation or threats, many other witnesses will not receive protection, which contradicts the primary purpose of protecting witnesses and victims. Furthermore, the current scope of protection is still limited because there are no specific regulations to protect certain groups, such as children as witnesses or victims of sexual violence as witnesses. The unclear regulations regarding victim-witnesses in such conditions will indirectly create obstacles in the implementation of their protection.

Structural components According to Lawrence M. Friedman The Structure of A System Is It Skeletal Frame Work it is the Permanent shape, The Institutional of the System.¹⁰ If this view is associated with legal protection for children victims of sexual violence In Indonesia, the institution that plays a role is the Witness and Victim Protection Agency (LPSK) is an independent institution which is according to the Witness protection law and the victim is directly responsible to the President. Nevertheless, the relationship between LPSK and other law enforcement officials has not been regulated in detail. LPSK was established at least in the provincial capital and in districts or cities which are deemed necessary by the institution. LPSK members consist of professionals who have experience in the field of promotion, fulfillment, protection and law enforcement and human rights.¹¹

Support from staff who will help LPSK operations, such as staff who have expertise in overcoming certain trauma experienced by witnesses and victims is not set up in the Witness and Victim Protection Act. While LPSK is responsible for the provision of protection and assistance to witnesses and victims.¹² In addition, victims often face various problems, such as a sense of insecurity and lack of support from the community due to negative stigma related to the case they experience. Therefore, the process of giving protection and assistance to witnesses and victims needs to be adjusted to the various obstacles they experience, so that special rules are needed to regulate this. In addition, submission of protection is not only a problem for witnesses and victims, but also need to consider other aspects, especially the role of the Witness and Victim Protection Agency (LPSK).

Simply, the main factor in law enforcement is the achievement of legal objectives, namely creating public order. This goal is in accordance with the role of law as a regulator of order. The need for order is a reality and objective need for every society. Adherents of positive legal theory assert that legal certainty is the main target of the law itself.¹³ Therefore, order or order can only be realized if there is legal certainty as outlined in clear written rules.

Cultural components are related to basic values that are the foundation of applicable legal regulations. Legal culture According to Lawrence M. Friedman is also called the Legal Culture term, Legal Culture It is the element of social attitude and value.¹⁴ If it is associated with the values that underlie legal protection regulations for children victims of sexual violence, this aims to build the foundation of law preparation which is a tool to realize prosperity,

⁸ Lawrence M. Friedman, (2001), *Op. Cit*, hlm. 10

⁹ Undang-Undang Nomor 31 tahun 2014 tentang Perubahan atas Undang-Undang Nomor 13 tahun 2006 tentang Perlindungan Saksi dan Korban, Pasal 5.

¹⁰ Lawrence M. Friedman, (2001), *Op. Cit*, hlm. 10

¹¹ Undang-Undang Republik Indonesia Nomor 31 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban, Pasal 14.

¹² *Ibid*, Pasal 12

¹³ Hans Kelsen, (2016), *Teori Hukum Murni Dasar-Dasar Ilmu Hukum Normatif*, (Bandung: Nusa Media), hlm. 75-77.

¹⁴ Lawrence M. Friedman, (2001), *Op. Cit*, hlm. 15

happiness, and justice for the country and its people. In addition, the cultural approach according to M. Solly Lubis plays the role of penotng in the efforts of social control, especially related to beliefs and noble values adopted by the local community.¹⁵

In the context of existing legal culture, the process of handling cases of sexual violence often involves various parties that are the most mediation process and negotiations. Sometimes if the violence has resulted in the victim's pregnancy, conducting marriage between victims and the perpetrators is often considered a peaceful solution.¹⁶ But if it is studied more deeply, mediation like this can actually function as a way of silencing the victim's voice rather than truly reconciling. These events like this are obstacles in providing adequate legal protection for children victims of sexual violence because the depressing attitude to the victim actually strengthens the dialing against them. In addition, in cases of sexual violence there are still views that tend to blame the victim for criminal events that happen to him, for example because they are wearing open clothes or are in a quiet place at night. In connection with this, it is very important to provide legal protection for children based on simple national law but guarantee legal certainty for all Indonesian people, without ignoring legal values that develop in society

4. CONCLUSION

Criminal law enforcement is carried out through a justice system involving police, prosecutors, courts, and correctional institutions. Each component in this system interacts each other and affects each other internally. Likewise, if it is associated with the three legal systems (substances, sublutions, and legal culture) in addition, this also affects the implementation of legal protection for child victims of sexual violence. Lawrence M. Friedman, believes substance covers material rules and procedures for work institutions. In Indonesia, positive law is still inherited from colonial times that emphasize the suspect. Therefore it is necessary to change so that attention is also balanced to the victim. The structure is a fixed framework in the legal system, like LPSK, which according to related laws has not yet regulated its authority adequately so that its performance becomes hampered. Legal culture (legal culture) includes social attitudes and community values. Child protection victims of sexual violence must be based on simple national rules but ensure legal certainty without ignoring local values to realize justice and welfare.

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¹⁵ M. Solly Lubis, (1989), *Serba Serbi Politik Dan Hukum*, (Bandung: Mandar Maju), hlm.135.

¹⁶ <https://regional.kompas.com/read/2024/10/24/204700378/kakak-dan-adik-di-purworejo-diperkosa-13-tetangga-hamil-dan-dipaksa-nikah?page=all>

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