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Rehabilitation and Legal Assistance: Fulfilling Rights of Victims in Violence Household

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Abstract

Children as ideals and the generation a nation must always be protection of their rights, and such protection is obligation parties without exception and without discriminating against children, including children as victims domestic violence victims of violence as those suffer, are persecuted, sick, suffer losses due to perpetrators' actions. To heal the wounds or sufferings of victims to criminal acts of domestic violence with rehabilitation and legal assistance. Rehabilitation is carried the form recovery and treatment the condition his body can recover and return normal while legal assistance victim, as demanding perpetrators be given sanctions that are commensurate with their actions. The research method used the form normative research, this case by reviewing literature or books legislation relating to problem to examined. The aim is find out that providing rehabilitation and victim assistance is a form of legal protection and fulfillment of the rights of victims of violence in household.

INTRODUCTION

Children as a generation who will continue the struggle and ideals of the nation, and because children must be given protection of their rights, especially in their rights of life, where the protection of their rights has been given and has existed since a child is in the womb of his mother or the womb of women, and the manifestation of protection is that the mother consumes nutritious food, vitamin intake so that the child is born healthy without any deficiency. The protection of human rights has been regulated in various regulations in accordance with Law No. 39 of 1999 concerning human rights including human rights, which is implicitly the rights of children wherein in the first article of the provisions a set of rights are attached to the nature and existence of humans as God's Creatures must be respected, upheld and protected by the state, law and government, and everyone for the sake of respect and protection of human dignity.

Acts of violence should not be committed against children because they violate the

human rights of a child, and are very inhumane, and based on data from the Indonesian Child Protection Commission (KPAI) that there are 4,885 cases of violence against children, where the cases in the first order are children worry with the law and has reached the number of 1,434 cases, and the second is a case related to family and care which alternatives reach the number also 857 of the cases and the third is the case of pornography and cyber has reached 679 cases.¹ From this case, it can be explained that the child is obliged and must be protected by the existence of his rights, regardless of whether the child is a criminal offender or a child as a victim of a crime, must still be protected from the existence of his rights to obtain full and complete protection. By upholding their rights, in addition to getting compensation to the victims, of course there are often negative impacts on the victims due to the actions they have received or experienced, and this can have psychological or psychological effects.

Psychiatric children are disrupted if their lives feel depressed, especially if related to their families there is a father and mother, where the family is the desire of every child to pour out the coveted love but become victims of family brutality, so that eventually the child experiences trauma, depression and even stress due to fear in himself to return to his home and was very afraid when meeting his parents, fear always haunted him wherever the child went.² This resulted in mental damage to the child, due to unpreparedness in accepting the situation, even though the rules in the existing Law, Number 4 and 1979 stated that in the article 9 stipulation that parents were the first to be responsible for the realization of the welfare of the child both spiritually, physically and socially, meaning that the family or parents must protect and protect their children without exception, instead of doing violence or torture to their children but must protect and respect their rights to life.

Law number 35 of 2014 concerning amendments to the provisions of Law of 2002 with Number 23 concerning Child Protection states that all activities to ensure that the rights of a child can grow develop and participate optimally in accordance with the dignity and also their dignity and get protection from all acts of violence and discrimination. Even in the Law on the Elimination of Domestic Violence Number 23 of 2004 also stated that victims in these crimes get protection and health services according to medical needs and legal assistance, as stated in the provisions of article 10 regarding the PKDRT Law.

¹ KPAI Komisi Perlindungan Anak Indonesia, "KPAI Sebut Pelanggaran Hak Anak Terus Meningkat", <https://www.kpai.go.id/berita/kpai-sebut-pelanggaran-hak-anak-terus-meningkat>, accessed on 30 November 2019.

² Saraswati Rika, *Hukum Perlindungan Anak di Indonesia*, (Bandung: PT. Citra Aditya Bakti, 2009) 21-23.

Children who experience victims as a result of criminal acts in domestic violence must be quickly and promptly dealt with in recovering their body condition, and the child must get protection as witnesses and victims of criminal acts experienced, violence experienced in the domestic sphere could have occurred. and due to physical, psychological, sexual abuse or neglect of the household. Physical violence can result from injuries, bruises all over the body of the child, and for proof it can be done by examining a doctor and will be made *visum et repertum*, which aims to see whether the child experienced is included in category³ in severe abuse or not, if the consequences such actions result in severe mistreatment or cause the child to die of course the offender will be subject to severe sanctions.

Moreover, in Article 13 paragraph (1) in the provisions of Law Number 23 of 2002 concerning Child Protection, the Child Protection Act as already exists and amended by Act Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection Act Number 35 Year 2014 which states or explains that every child during or in the care of / or parents, or also guardians, or also other parties from anywhere who must be responsible for or for the existence of care, also has the right to receive protection and also from various actions and treatments concerning: (a) acts of discrimination (b) acts of exploitation, which are carried out both economically and sexually (c) acts called neglect; (d) acts of cruelty, as well as violence, and also acts of ill-treatment which caused victims to suffer, (e) acts of injustice between one party; and (f) the existence of another wrong treatment.⁴

In addition to the various threats of punishment given to perpetrators of crimes from domestic violence, children as victims are entitled to medical rehabilitation and psychosocial and psychological assistance and or recovery of their conditions and are entitled to legal assistance for the actions or sufferings they experience accompanied by the power of attorney the law, and get protection from witness and victim protection institutions (LPSK), based on the provisions or regulated in Law of 2006 with Number 13.

A research objective is to find out how to protect the rights of children victims of domestic violence through rehabilitation and legal assistance. The method used in this paper

³ Ibid, 35.

⁴ “Tindakan Kekerasan Yang Tergolong KDRT”, Kompas, <https://lifestyle.kompas.com/read/2018/10/18/081500620/tindakan-kekerasan-yang-tergolong-kdrt?page=al>, accessed on 2 Desember 2019

is a method with a normative juridical approach that is based on the main legal material by examining existing theories and concepts, as well as relating to legal principles and also statutory regulations related to this research.

DEFINITION OF CHILDREN

In the provisions of the 1945 Constitution with article 28 it is stated that the state guarantees that every child always lives, grows and develops and is always entitled to protection from all acts of violence and discrimination. This article has something to do with the provisions in article 28G which states that everyone has the right to personal protection, personal, family, honor, dignity, and property under power, and is entitled to a sense of security and protection from the threat of fear. to do something that is a human right. The 52nd article and also the 66th article of the provisions of Law number 39 of 1999 concerning Human Rights also mentions the civil, political and cultural rights of children which also need to be respected and protected.

Various regulations provide definitions related to the understanding of children, with different versions, there are those that state that a child is in the womb of a woman, meaning that a fetus can be called a child and has the right to be given protection so that it can grow and develop, and has the right to get the right to inherit if his parents have passed away, have obtained the rights to inherit the assets of the heir, his parents and have been considered as heirs, meaning that even though he is still in the womb he is two weeks old and has been entitled to obtain legal protection for the existence of his rights , to remain guarded and cared for until born into the world in a state of safety and also physically and mentally healthy.⁵

Protection of the existence of the child in the mother's womb must be cared for and guarded, until he is born, and no violence is carried out which results in the child losing his right to live, his mother as a parent is obliged to care for and care for him so that no attempt is made to eliminate the life of his child by intentionally aborting his womb, because it is not wants the child, but the priority of the child is to grow and develop the child. But in the law relating to child protection that is in Law Number 35 Year 2014 concerning amendments to Law Number 23 Year 2002 concerning Child Protection which states that the age limit of children is between 8 to 18 years that is what is referred to as definition of a child. means that

⁵ Hasyim Nur, "Menyoal Pemulihan Bagi Anak Korban Kekerasan di Indonesia", *PALASTREN: Jurnal Studi Gender* 9, no. 2 (2016): 310.

the age below 8 years is not called a child, so it can be said that between these ages there is maturity in the child both psychologically, mentally and psychologically but cannot be called an adult, and is the responsibility of the government, other institutions and even the community is also obliged and concerned to provide protection to children.

CHILD PROTECTION

It is said protection is all activities to guarantee and also protect children and also the existence of their rights so that they can always live, and grow, also develop, and always participate in an optimal manner and also in accordance with dignity and human dignity, as well as always get protection from acts of violence and discrimination. Efforts for protection from children need and can be carried out as early and as early as possible, namely from the fetus and in the womb of a woman and until a child is aged or eighteen years old. Then starting from the concept of effort protection from children who are intact, and comprehensive, and also comprehensive, the law lays down obligations and gives protection to children based on the principles of non-discrimination, principles based on interests in consider the best for the child, the principle of the existence of the right to life, and also the continuity of life, and also the development, as well as the principle of respect for the views / opinions of the child.

Protection of children can be divided into 2 (two) parts, namely:

- a. Protection of children which is also juridical, which includes: protection of public law and also in the form of civil law.
- b. Protection of children who are also non-juridical, including: protection in the social field, including in the health sector, and also in the field of education.

Parents are considered to really have a very large and greater share in providing protection for the rights of children because they are and are part of a family and or also any existence of the needs of children both regarding the existence of physical or spiritual should they adequate, but from the community also takes part in providing protection for the rights of children. The role and participation of the community must be immediately realized by always maintaining the children's agronomy and their rights when outside the home environment to still feel comfortable when outside the home.⁶

⁶ Rini Fitriani, "Peranan Penyelenggara Perlindungan Anak dalam Melindungi dan Memenuhi Hak-Hak Anak", *Jurnal Hukum Samidra Keadilan* 2, no. 2, (2016), 252-253.

CHILD RIGHTS OF VICTIMS OF VIOLENCE

In explaining the existence of the 1945 Constitution in its 34th article that the poor and abandoned children are maintained by the State, this is a very positive tendency in the State's efforts to provide full protection of children's rights, including the rights of children due to domestic violence that befell them. The role of law enforcement agencies related to child protection in the role of law enforcement officials related to child protection in Law Number 35 of 2014 concerning amendment of law Number 23 of 2002 concerning Child Protection.

- a. The treatment of children's rights is treated humanely in accordance with the conditions and dignity and the existence of children's rights.
- b. The existence of special officers and assistance to children at an early age, from the beginning of the investigation this provision was given so that the child could reveal the problem with the special assistance related to the problems that posed the child.
- c. Adequate facilities and special infrastructure are provided The available facilities are at least adequate so that it does not become an obstacle in terms of a child expressing his case both as a witness and also a victim of a criminal offense.
- d. Avoid labeling or labeling children with children by not sharing their identity through other media, including mass media, not opening the child's disgrace that he had been a victim of domestic violence, but must be tightly closed so that the public does not know.
- e. The provision of protection through the implementation of rehabilitation efforts, namely medical, psychological and social as well as those carried out both within and outside the institution.
- f. There is a guarantee of safety given to witnesses and victims as well as to experts who are mentally, physically and socially as well as the availability of accessibility with the aim of getting information related to the case and its development.

The police officers play a role in providing protection based on the Law on the Elimination of Domestic Violence, namely Law Number 23 of 2004 to children as follows:

- a. Legal-related consultations, in this case the victim is given the right to do

sharing and also consultations on the existence of various legal events that occur and befall the victim and himself and the existence of advocates in this case the advocate can do and draw a conclusion on the existence of events that happened or legal event that they experienced as well as a solution or a solution for its solution to the victim.

- b. Conduct mediation or negotiation between the victims and perpetrators of domestic violence, in this process the advocate becomes a neutral party between the victims and perpetrators and provides input / advice to find solutions to problems in legal events that occur Victims are also accompanied in terms of the level of investigation and prosecution, as well as examinations, also in court hearings, as well as advocates and assistance and also monitoring of the existence of every stage of the process of an ongoing legal process.
- c. This is done because there is evidence, which is a concern if no one accompanying the victim will be threatened and intimidated by the perpetrators and result in convoluted testimony from the victim, so that the perpetrator can be lightly sentenced.
- d. Advocates who also provide assistance to victims both at all levels, including investigations, prosecutions and hearings in court sessions and in coordination with law enforcement officials, so that the information obtained is more reliable and accurate.⁷

CHILD PROTECTION THROUGH REHABILITATION AND LEGAL AID

Children as victims in domestic violence or referred to as domestic violence, of course experience prolonged trauma due to violence that befell them and due to severe suffering, suffering is not only psychological, but can be due to physical abuse they experience. Children in protection in giving their testimony both as witnesses and also victims get always protection from witness and victim protection institutions, that victims who give testimony must get security and protection from all threats and intimidation of the perpetrators, so that victims are not depressed in giving their testimony at the trial.

⁷ Mahmudin Kobandaha, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Dalam Rumah Tangga Dalam Sistem Hukum Di Indonesia", *Jurnal Hukum Unsrat* 23, no. 8 (2017), 88.

Children as victims of domestic violence who are supposed to get happiness in their families and as a place to pour their hearts out are not as expected, children are victims of violence and emotional venting from fathers, mothers and families, and children as victims of violence perpetrated by the family. To restore the situation, the child needs to be rehabilitated, that is, recovery of the existence of a disturbance caused by physical, psychological, and social conditions so that in carrying out something, the role can be returned naturally and well, certainly not only in the family but also in the community.⁸

In accordance with the provisions of Article 10 point (b) of the Law on the Elimination of Domestic Violence that victims are entitled to the right to receive health services, and paragraph (d) is the existence of assistance by social workers and legal assistance at the level in the inspection process in accordance with the law invitations that apply. Even in the Law on Child Protection, namely Number 35 Year 2-14 concerning changes to the provisions of law number 23 of 2002 concerning physical and psychological violence, namely in articles 69 and 69A regarding sexual violence, because children are victims of domestic violence not only physical or psychological but can also be sexual or child neglect.

However, this paper only compares children as victims of physical, psychological and sexual violence. Rehabilitation provided is more focused on medical rehabilitation, psychology and where actually medical and psychological and social rehabilitation, medical rehabilitation is given in order to heal the wounds of the child, while in psychological rehabilitation is done so that children can forget the bad events that befall them, so children can forget their dark past and can grow as usual to grow back to normal by not remembering bad things, while social rehabilitation is an integrated recovery both physically, mentally and also socially.⁹

In line with the aforementioned provisions, Government Regulation Number 4 of 2006 concerning the Implementation of Cooperation in the Recovery of Victims of Domestic Violence. Which is related to women and children victims of violence, where the regulation clearly states that, Implementation of recovery under this regulation includes: a. health; b. assistance for victims; c. counseling; d. spiritual guidance; and e. there is a re-socialization. It is clear that the protection of child victims' rights in domestic violence has become a concern

⁸ Gultom Maidin, *Perlindungan Hukum Terhadap Anak dan Perempuan*, (Bandung: Refika Aditama, 2014) 29-31.

⁹ Lamintang P.A.F, *Dasar-Dasar Hukum Pidana di Indonesia*, (Bandung: PT. Citra Aditya Bakti, 1997), 34-36.

of the State and Government so that this rule is enforced, with rehabilitation it is expected that children can be restored and treated so that they can return to normal and forget everything.

In connection with the rehabilitation which is the right of children of victims of domestic violence there is also legal assistance related to the problems they face, children need to be accompanied by an advocate, and legal aid here is also an absolute right of the child as a victim in all criminal acts that occur, legal assistance This is provided when the level of investigation in the police has been accompanied by a lawyer, and the level of prosecution¹⁰ and in court, where the purpose of legal assistance is for the child to be able to describe the chronology of the events they are experiencing, so that they can impose penalties or sanctions on the perpetrators, and legal assistance can also be given to child victims of violence classified as being unable.

Testimony given by the child either as a victim or witness in the investigation, and the prosecution as well as the court must be free and there must be no intervention or threat from the perpetrator or the closest person in this case is his family, but must be free meaning the witness is someone who experienced, knew and see firsthand the events that occurred and this is a protection from witness and victim protection institutions in providing comprehensive protection to children, so that children are not depressed in telling the criminal events they experienced. Legal aid is the right of children in upholding their rights besides rehabilitation, because by punishing the perpetrators the enforcement of children's rights which is the State's obligation to protect children's rights is carried out, because the protection of the rights¹¹ of child victims of domestic violence is State obligations and responsibilities. Perpetrators of violence against children may be subject to the provisions of Article 76C and the threat of punishment in Article 80 as stated in Act Number 35 of 2014 concerning amendments to Act Number 23 of 2002 concerning Child Protection.

CONCLUSION

Rehabilitation and Legal Aid is the Right of Children Victims of Domestic Violence and is the Obligation and Responsibility of the State, Government and Society to always provide protection to children victims of domestic violence. Rehabilitation is given so that it cannot be recovered physically, mentally and socially, while legal assistance is given so that

¹⁰ Ibid. 42-44.

¹¹ Sutedjo Wagiaty, *Hukum Pidana Anak*, (Bandung: Refika Aditama, 2010) 17.

the perpetrators are given severe legal sanctions so that it provides a deterrent effect and does not recur.

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