LEGAL PROTECTION POLICY FOR CHILDREN AS RAPE VICTIM IN GETTING REHABILITATION SERVICES

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In Getting Rehabilitation Services

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ABSTRACT

This study focused on identifying the rules or norms of positive law, relating to Article 64 paragraph (3) letter a of Law No.23 of 2002 carried through rehabilitation efforts, both within the institution and outside the institution. Background inequity of treatment between the rights of offenders and the rights of victims in the criminal justice system. Positive in criminal law today is more emphasis on the protection of non-physical rehabilitation of mental disorder be done "in abstracto" or indirectly berdasarkan legal system in Indonesia embraces the Civil Law system, which is based on the written law (written law) and poured as much as possible the norm to the rule of law. Special protection policy that ensures the future of the child victims of crime, in Article 64 paragraph (3) letter a of Law No.23 of 2002, it is necessary written law. Indonesia's civil law system adopted should be clearly mentioned and detailed in order to ensure legal certainty in providing maintenance support services and child care, medical, health care and physical rehabilitation of child psychology. Through the decision of the judge in imposing its decision based on the principles of organization of the judiciary, in article 2, paragraph (2) No. 48 Year 2009, the Court declared the state to implement and enforce the law and justice based on Pancasila, to implement the provisions of Article 64 paragraph (3) letter a of Law no. 23 of 2002.

Key Word : Protection, Law, Childs Victims, Rehabilitation
A. PRELIMINARY

Protection of children should refer to the principles of the best interest of the child that used in the case of all actions concerning children done by the board of government or private social welfare, justice institutions, government agencies or legislative bodies, the best interests should be a consideration (Article 3 paragraph (1) The Convention on the Rights of the Child). Daughter as a criminal act of rape victims in the criminal justice system, are not treated equally by the perpetrator as a defendant or suspect or that have been arranged terpidana rights in Law No. 8 of 1981 on the Legal Code Event Criminal Law (Criminal Procedure Code). The daughter of rape victim suffering as immaterial or non-physical form of suffering trauma. Child protection guarantees in the criminal justice system, not comparable rights protection guarantee sipelaku criminal acts. Protection of victims of child rape law limited by physical suffering arranged in chapters 98-101 Criminal Procedure Code, receives through the merger of the rights of victims of crime arising from the (only cost that has been issued by the victim). Offender accountability criminally ignoring the reasons or the consequences of the criminal act (crime) on self-sacrificial suffering. No effect process has stopped, when the verdict was executed criminal justice. Judicial process has been completed, the victim aside and forgotten not last with the criminal law in Indonesia profess sourced produce modern criminal law accountability in criminal law nature DAAD-dader strafrecht, that the criminal law oriented offender and actions, namely how to treat offenders act such that criminal rights and
interests of future criminal acts
dipelaku not to get worse before it
has not been involved with the
criminal law. Grants criminal
charges against perpetrators of
criminal acts, then you’re done
duty in the criminal law provides
protection to the community from
the threat of criminal acts,
perpetrators, including in the sense
of protection against this
community is significant sacrifice
(Roeslan Saleh, 1983: 18-19). To
what extent this state responsibility
for child protection law as a
criminal act of rape victims met
good happens in the legal system
in the country today. This tree
problems for the case of a rape
victim’s daughter shows there are
still many obstacles to girls as rape
victims in seeking justice. Law No.
Act No. 23 of 2002 on the
protection of children or the
government determining
characteristic in determining a
child protection law system still
shows gaps on child law and the
rights of children are not yet fully
integrated into the norms of
positive law and not up particularly
in rehabilitation grant as referred in
Article 64 paragraph (3) a letter of
Act No. 23 of 2002 on Child
Protection, stating specific
protection for children who have
become victims of the criminal acts
referred to in paragraph (1) shall
be implemented through:
rehabilitation efforts, both within
organizations and off the board.
The background injustice behavior
between the rights of offenders
and the rights of victims in
rehabilitation efforts, both within
organizations and institutions
outside the criminal justice system
and national purpose, which is to
protect all the people of Indonesia
and to promote the general
welfare. On this basis, the state
must intervene actively participate
in our efforts to provide protection for the fate of individual victims and concretely, through rehabilitasi as a form of compensation or restitution, so that became a problem in this study were: (1) What is the policy of legal protection as victims of child rape obtain rehabilitation? (2) How does the policy in the future to guarantee legal protection for children as rape victims in obtaining rehabilitation service?

B. Research methods

Type of this study is normative, namely research which is focused for identify about the rules of or norm-norm within positive law. Method this approach done with several approaches, namely covering approach legislation, approach the concept, comparison and historical approach. Collecting legal materials conducted through the inventory the documents comprising bibliography study to seek legal materials, consists from of primary material consists of UU No. 23 Year 2002 and government regulations who relevant, Materials secondary law the form of books-books, journals and article who discusses policy of rehabilitation protection for child , Material law of tertiary the form of encyclopedias and dictionary. After the legal materials primer and materials secondary legal, as well as legal materials tertiary Collected then processed with selecting reabilitas and its validity. Primary materials and secondary materials, as well as the tertiary material was analyzed qualitatively, ie by describing the material has been obtained from the results of research through an inductive approach, which is a framework fikir of knowledge that is specific to that is common knowledge and deductive approach, namely.
knowledge who general nature into knowledge having the character of which specifically with menghubungkan primary legal materials and materials secondary legal as well as legal materials tertiary.

C. RESULTS AND DISCUSSION

1. Legal Protection Policy for Children As Victims of Rape in Obtaining Rehabilitation services.

Implementation of child protection services as a victim, is mandated by God Almighty. As already mandate should have the right to get maintenance, care, guidance and education. By providing basic rights to the child, the child is expected to be developed so that a child is useful for parents, families, communities, and the nation as a whole. Means to obtain one of them in the form of reparation for individual rehabilitation, should be given adequate provisions covering the rights of groups or communities that are victims to file claims with, the charges against losses and demands for reparations should get. For purposes of determining the meaning of the victims, both individuals and groups, it is useful to refer to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power), especially on the phrases of paragraphs 1 and 2. Here's his quote: "Victim means a person who is suffering from individuals or groups of crimes, including physical or mental injury, emotional suffering, economic loss or deprivation of their basic rights real."

Violence against women has become a pressing concern and widespread, and highly
relevant to the context of the current study on the rights of one of them in the form of reparation for the victims rehabilitation. Protection of human rights under international law, sovereignty associated with the four views, namely absolute universal outlook, relatively universal, partikularistic absolute and relative partikularistic view. Consider the problem of absolute universal view of human rights protection as a universal ethic that can not be offered anymore by any country. This is different with relatively universal outlook, though still recognize the problem as a problem of protection of universal human rights, but this view still recognize the neutrality that is based upon the foundations of international law. Absolute Partikularistic view, see the question of human rights (HAM) as a universal problem and the problem of their race. This means that the enforcement of international covenants-covenants require appropriate coordination with karateristik culture of a nation. Relative partikularistic view, acknowledge cultural realities in the implementation of human rights protection that occurs universally. This pregnancy challenge how that implementation of universal human rights foundations senapas and get support from the national cultural values to applicable get formal legality and social (Idrus Affandi and Karim Suryadi,, 2003: 6)

Minimal protection that can be obtained by all people, because of its existence as a human rights provide a moral recognition of human equality and the recognition of each person should be given the opportunity to develop themselves fully. Dignified life and other human
values depending on Human Rights. Human Rights established the basis for human existence. The foundation of human existence, especially for children set out in several international instruments relating to perlindugan law against teenagers (children) are: (a) The regulations of the UN minimum standards for juvenile justice administration (Beijing Rules) which passes through a resolution at the UN Assembly No. 43/35 dated 29 November 1985; (b) regulations for the protection of UN-perturan teenagers (children) who have lost their liberty, November 1990, and (c) in the framework of the UN guidelines for the prevention of crime are not teens / children (guidelines Riyadh) "United Nations guidelines for the prevention of juvenile delinquency (the Rhiyadh Guidelines) ", is authorized and declared in the UN Assembly resolution no. 45/122 of 14 December 1990, (d) the United Nations General Assembly Resolution No.45/110 Standard UN Minimum Rules for Non-Custodial Measure (Tokyo Rules), Date December 14, 1990 (Paulus Hadisuprapto, 2008: 135).

The legal system in Indonesia is adopting Continental European system, which is based on written law and norms maximum pour into the rule of law. Which is the source of law is the law created by legislative authority and habits of life in the community as long as not contrary to existing regulations. General principles of continental European system is to obtain legal binding force, because the sources of law embodied in the form of regulations and laws systematically arranged in a particular codification or compilation (http://ekosss.blogspot.com/ 2012/09/antara-civil-law-dan-common-law.html).

The main principle is adopted
considering the value of which is the main purpose of the law is the rule of law. So based on the different legal systems, judges can not be free to create laws that have general binding force. The decision of a judge in a case only binding on the litigants alone. Guarantee the fulfillment of rehabilitation and recognition of children's rights, including the right - the right to recovery of the child's physical health and non-physical, depending on a global movement where every person not only understands and respects the obligation to act on behalf of the children and the children. Parliament and its members are dibarisan forefront in the fight for the protection of children. Law makers can legislate, oversee government activities, allocate financial resources and as a leader in the state and society. Rehabilitation guarantees against the written law only mentions the victims of serious crimes and human trafficking, the recovery fulfillment of children's rights can be granted in accordance with positive law by the applicable legislation. The rights of children as victims of crime to obtain rehabilitation provided for in Article 64 paragraph (3) letter a of Law 23 of 2002, is not mentioned in the written law, the rights of the child will not be met by the state. This was followed by the consequences of the welfare state model that adopts a Continental Europe. The state is responsible for providing welfare to the society sourced written law. formulatif rehabilitation policy regarding the protection of rape victims of crime through compensation by positive law, are:

1. Positive criminal law is currently more emphasis on the rehabilitation of victims of rape protection "in abstracto" and indirectly
2. Direct protection of rape victims are still limited in the form of rehabilitation through actors restitution by criminal acts. There are no provisions for compensation provided by the State to the crime of rape victims. Rehabilitation through indemnity by the state is limited to the suspect or accused and convicted.

3. There are five (5) the possibility of rehabilitation through compensation to rape victims in the criminal case, namely: (a) the provision rehabilitasi through specialist indemnity as a condition of the conditional criminal, (b) Improving the effect of economic crime as an act of discipline, (c) payment of compensation in corruption, as an additional punishment, (d) the replacement cost of rehabilitation that has been issued in the merger process compensation claims cases (civil) in a criminal case (e) Pay the fine by sipelaku criminal offenses to the state, if not paid sipelaku offense is imprisonment for a maximum of 6 (six) months (Muladi and Barda Nawawi Arief, 1984: 136).

Rehabilitation in Indonesia claim compensation through the crime of rape victims through the civil law is based on Article 1365 Civil Code. People who are guilty of committing an unlawful act and the harm to others, is the authorities change their losses. Rehabilitation through compensation lawsuit by victims of rape crime through civil law, can
only be done if the criminal case investigation has been completed, and the accused is legally and convincingly proven to have violated the criminal offense of which the accused to him and have done, and have had legal power fixed.

2. Law for Child Protection Policies For Rape Victims

Guarantee the future of ministry Acquire Rehabilitation

Integrated criminal justice system (Marking) in handling cases of violence against women is an integrated system that shows the linkage between the agency / the authorities deal with cases of violence against women and access simple and affordable service for all victims in the judicial process. Very important role companion sacrifice and give the psychological impetus and moral to sacrifice in order to explain the violence he suffered in the judicial process (Nurherawati 2000: 17).

Criminal Procedure Code does not regulate nor prohibit any companion for the victims, namely:

1. Escort role sacrifice is necessary, the matter relating to the rights of victims to be heard evidence, getting information on running remedy, considered that want to gain a sense of justice and restored the situation itself;

2. Companion to help victims of violence more openly reveal sustained, facilitating investigation and opening policies do currents hampered communication; Escort doing strengthening, empowerment and support for victims of decision-making and tackle violence against women he encounters; Escort
developing coordination with other services (counseling in psychology, psychiatry, shelter, involvement with family / community / community leaders / religious leaders / custom figure. Till coordination between companion, sacrifice, investigator, prosecutor general, judge advocate and outreach involving suspect / accused is imperative in giving victims rights for outreach (Widiartama, 2009: 19-20).

Coordination mechanism between companion, daughter of victim, the investigator, the public prosecutor, the judge and engage advocates against for witnesses and / or victims of criminal acts, the daughter of rape will give the right to sacrifice for justice and free from discrimination. Policies to sacrifice to balance the interests of the victims are directed to well how to treat a form of sacrifice and restitution of the notification. Policies and general duty of students can be through:

1. The police should inform the victim about the possibility of the right information and help obtain restitution from the offender
2. If the victim wishes to obtain information menyatakan and restitution, police must consider the victim's wishes in accordance with the authority
3. The police had to enter the victim's wishes in the case file and describe in detail the injuries suffered by the victim
and restitution desired by the perpetrator.

4. Prosecutor must inform the victim about all important decisions regarding his case and account the wishes of the victims obtain restitution when to stop the case.

5. The public prosecutor shall invite rape victims, especially the families of the victims for personal hearing to explain the procedure and which particular aspects of the case (Mudzakir, 2007: 19).

Inclusion of rehabilitation through restitution and compensation as part of the criminal law is a fundamental change, as it affects the way the field against the concepts that affect the procedure, because the substantive justice and not diminish the rights of the suspect or the accused. Coordination is needed to work with victims of crime. Taking into account the victim’s cooperation in the future is absolutely necessary, because without the support of victims of crime, either as a complainant or as a witness, you can bet the police and prosecutors can not work properly and the system of justice would be paralyzed. Role and support an enormous toll on the criminal justice system, needs to be balanced by giving attention to the victim.

Court decisions under Article 50 Number 48 Year 2009 on Judicial Power, reads: The court’s decision must
include the reasons and in addition to the basic decision, also contains specific articles of the legislation in question or the source of the unwritten law that formed the basis for the judge. Article 53 No. 48 of 2009, in examining and deciding the case, the judge is responsible for establishing and decisions he made. Determination and decision of the judge shall state the reasons which the law is based on reason and legal basis of the right and true. Article 68A of Law 49 of 2009 on the General Court, stating, in examining and deciding the case, the judge should be responsible for setting and decision making. Determination and decision of the judge shall state the reasons which the law is based on reason and legal basis of the right and true. Under the provisions of Article 50 and Article 53 No. 48 of 2009, and Section 68A of Law 49 of 2009, then the chances of the judge to apply the provisions of Article 64 paragraph (3) letter a of Law No.23 of 2002.

Chance judge in ruling on the basis of maintenance dropping judicial power, Article 2 paragraph (2) No. 48 of 2009, states: applying justice and uphold the law and justice based on Pancasila. Upholding law and justice based on Pancasila through the National Law concept of Pancasila, namely the establishment of a functional relationship between the power-power Proportional countries, dispute settlement consultations in the last while, and justice is a means of human rights not only in suppressing the rights or obligations but the
establishment of an equilibrium between rights and obligations. Obligation as a result of the accountability for breaches of international human rights law provides a right to a personal or a private group of the victims of the country's territory to obtain an effective remedy and reparation fair, according to international law (Alternate-Losses of International Law Violations). The concept of state responsibility in International law gives the concept of balance in line with the National Law Pancasila, namely central point is the compatibility of the relationship between government and citizens on the basis of concordance (Philipus M Hadjon, 1987: 23).

D. Conclusion

1. Law for child protection policy as a rape victim in obtaining rehabilitation service is to create a basis of equality of justice and equality for child well-being as a rape victim, one of them through damages and compensation given to the victims as a form of rehabilitation service of state responsibility in providing protection law. Policy in Article 64 paragraph (3) a letter of Act No. 23 of 2002 regulating the rehabilitation positive children in criminal law now more emphasis on non-physical form of shelter rehabilitation of mental her assessment done "in abstracto" based on their direct or indirect systems of law in Indonesia profess systems of Civil Law, which is based on written law (written law) and Pouring closely as possible to the norms of the rule of law

2. Policy that guarantees special protection for child victims of
the future as rape, in article 64 paragraph (3) letter a of Law No. 23 Year 2002, have enabled the law written in Indonesia who profess the civil law systems of law which should be mentioned in clear and detailed to ensure provide legal certainty in the service and maintenance of child-care assistance, treatment, health services and physical rehabilitation of child psychology. Through judge in ruling on the basis of maintenance dropping judicial power, Article 2 paragraph (2) No. 48 of 2009, states: applying justice and uphold the law and justice based on Pancasila, can apply the provisions of article 64 paragraph (3) letter a of Law No. 23 of 2002.

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