

The Concept of the Criminal Formulation Policy for Adults in Adults with Children with Disabilities as Victims of Rape Criminal Action

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Abstract

The purpose of writing this article is the Policy Formulation of Criminal Weapon Formulation of Adult Actors with Children with Disabilities as Victims of Rape. The study method uses a statutory approach (statue approach), a case approach (case approach), and a conceptual approach (Conceptual Approach). When discussing about Rape with child victims is indeed more severe than that of adult victims, this is further explained in article 81 of the LoGA which shows that the LoGA now has a different sanction system than the Criminal Code. related to criminal charges for adult offenders with children with disabilities as victims of rape, because in the disability law related to crimes involving persons with disabilities the criminal justice process is carried out in accordance with the provisions of the criminal procedure law (article 35 of the Disability Law), while the urgency of criminal prosecution for adult offenders with children with disabilities as victims of rape and the concept of criminal charges against adult offenders with children with disabilities as victims of rape are not regulated in the SPPA Law, Disability Law and UUPA

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PRELIMINARY

The crime of rape is a serious crime because it damages the future of a woman, especially if the victims of rape are children, because after all children are the foundation and hope of this nation to be more advanced and continue to grow in the future, without them who will bring the nation this is for the better. Talk about children and their protection will never stop throughout the history of life, because children are the next generation of the nation and the next generation of development, that is the generation prepared as the subject of sustainable development and the holder of the future control of a country, Indonesia is no exception (Abdul Wahid dan Muhammad Irfan, 2011).

Further regulations regarding rape victims are regulated further in KUHP article 285 of the Criminal Code which reads:

"Anyone with violence or threat of violence forces a woman who is not his wife to have intercourse with him, punished, for raping, with a twelve-year prison term."

Article 286 of the Criminal Code which reads:

"Whoever has intercourse with a woman who is not his wife, he is aware, that the woman fainted or helpless, was sentenced to prison for nine years".

Article 287 of the Criminal Code which reads:

- (1) *Anyone who has intercourse with a woman who is not his wife, is known or should be reasonably expected, that the woman is not yet 15 years old or is not real how old, that the woman has not yet married for a period of nine years in prison.*
- (2) *Prosecution is only carried out if there is a complaint, except if the woman is not yet 12 years old or if there is one of the things mentioned in articles 291 and 294.*

When discussing about Rape with child victims is indeed more severe than that of adult victims, this is further explained in article 81 of the LoGA which shows that the LoGA now has a different sanction system than the Criminal Code. Sanctions mean legal consequences, whereas "sanctions in criminal law include criminal (Dutch: straf) and actions (Dutch: maatregel)" (Frans Maramis, 2012). What is stated here shows that the imposition of sanctions for Defendants of rape of the Child is very diverse, ranging from the more severe criminal offenses in Article 81 paragraph (1), to the weighting due to the specific status of the perpetrators (eg parents or guardians), repetition crime, bad consequences to the victim (for example, serious injury), also additional crimes, in the form of announcements of the identity of the perpetrators, as well as actions (maatregel) in the form of chemical castration and the installation of electronic detection devices, in article 1 paragraph 4 of the Law of the Republic of Indonesia Number 03 of 1979 concerning the Juvenile Court which has been replaced by Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Justice System of the Republic

of Indonesia State Gazette of 2012 Number 153 (hereinafter referred to as SPPA Law) in this SPPA Law, children who are victims of rape are defined as Children who are not yet 18 (eighteen) years of physical, mental and / or economic loss suffered caused by a crime .

Witness statements have an important position in proving criminal cases as seen in their placement in Article 184 of the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure, known as the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code), which states that the information the witness is the main evidence. Witness testimony in his position as evidence is intended to make light of the case being examined is expected to cause confidence in the judge, that a criminal act has actually taken place and the defendant has been guilty of committing the crime. But what if the person has mental retardation or mental disability, and is a witness who has experienced, heard, seen or experienced a criminal case himself, then what can he called a witness. Based on the Decision of the Constitutional Court Number 65 / PUU-VII / 2010, the Constitutional Court (hereinafter referred to as the Court) has extended the meaning of witnesses, that is, not only those who hear, see, or experience themselves, but also every person directly related to the occurrence of criminal acts, must be heard as witnesses for the sake of justice and balance of investigators dealing with suspects or defendants. The victim's child becomes a witness, his testimony of the victim's child can be requested for the purposes of investigation, prosecution and examination in a court hearing as stipulated in the SPPA Law article 1 paragraph 5 Child witnesses are children who are under 18 (eighteen) years of age who can provide information for the purposes of investigation , prosecution and examination in a court of law concerning a criminal case that is heard, seen, and / or experienced personally, but what if the victim's child who is also a victim witness is a child with a disability who does need to get special treatment.

Related to criminal charges against adult offenders with children with disabilities as victims of rape, because in disability related criminal laws involving persons with disabilities the criminal justice process is carried out in accordance with the provisions of criminal procedural law (article 35 of the Disability Law), while the urgency of criminal prosecution on adult offenders with children with disabilities as victims of rape and the concept of criminal charges against adult offenders with children with disabilities as victims of rape is not regulated in the SPPA Law, Disability Law and UUPA, therefore the author in this case provides an example of 2 (two) decisions of children with disabilities who become child victims of rape as adult offenders, and 1 (one) decision of children with disabilities who are victims of rape, examples of such cases are used to be a comparison in handling rape cases that are involving children with disabilities and non-disabled children in the testimony of children with disabilities, therefore the case example used by the author will be presented as follows, namely Decision Number 1474 / Pid.Sus / 2019 / PN. Sby and Decision Number 70 / Pid.Sus / 2019 / PN. BBS

Study of the first decision with victims of disabilities as victims of rape of decision number 1474 / Pid.Sus / 2019 / PN. Sby, the child as a person with a disability was based on an interview with Registrar Eni Fauzi, SH., MH as a clerk in handling this case, stating that the child has mental retardation with the initials 14-year-old IP as quoted in Birth Certificate Number. 2358/2004.

The second review of decisions with children with disabilities as victims of rape verdict number 70 / Pid.Sus / 2019 / PN. BBS Disability statement in this ruling is based on witness testimony stating that the child has mental retardation, so the prosecutor in his claim stated that the defendant Muhammad Ni'am Bin Sayad aged 35 (thirty-five years) was proven legally and was convicted of committing a criminal offense article 82 paragraph (1) jo article 76E of the BAL, and impose a criminal sentence for 10 (ten) years minus the mass of temporary prisoners, as well as a fine of Rp.200,000,000 (two hundred million rupiah), provided that if it is not paid it will be replaced with imprisonment for 6 (six months).

The study of the decisions of the three children as victims of rape not disability verdict number 182 / Pid.Sus / 2017 / PN.Bil stated that the defendant Redjo / Djono Bin Damanu aged 43 (forty-three years) was proven legally and convincingly guilty of committing a crime as regulated and threatened with criminal offense in article 82 paragraph (1) jo article 76e of the LoGA as in our sole indictment and convicted Redjo / Djono Bin Damanu with a prison sentence of 11 (eleven) years reduced as long as the defendant is in temporary custody under orders so that the accused remains detained and fined Rp.2,000,000,000 (two billion) subsidair 6 (six) months in captivity.

Based on the 3 (three) cases above, there is a blurring of criterion 76 E related to the perpetrator's actions, regarding the physical background of the victim. It should be noted that the rules regarding the testimony of children with disabilities are not further regulated in legislation, especially in the existing Disability Act so that law enforcement officials become confused when entering witness statements of victims of children with disabilities in the crime of rape with adult offenders, so the need for amending the laws and regulations so that children with disabilities have the same rights as children who are not disabled. Especially if it is related to children as victims in a crime of rape, what about children with disabilities? Which really needs special handling and there must be a criminal charge for the offender with a child victim of a person with a disability

METHOD

The approach used by the authors in this study is a case approach, a statute approach and a conceptual approach. The case approach is an approach that examines based on cases that have obtained court decisions that have permanent legal force, the main thing examined in each of these decisions is the judge's judgment to arrive at a decision so that it can be used as an argument in solving the legal issues being faced. The statute approach is carried out by examining all laws and regulations relating to the legal issues being handled, (Peter Mahmud Marzuki, 2010), namely the statutory regulations relating to the "Policy Concept Formulation of Criminal Obligation to Actors Adults with Children with Disabilities as Victims of Rape ". The conceptual approach is carried out when the author does not move from the existing legal rules.

RESULTS AND DISCUSSION

I. URGENCY OF CRIMINAL IMPLEMENTATION TO ADULTS WITH CHILDREN WITH DISABILITIES AS A VICTIM OF Rape CRIMINAL ACTION

The problem related to children as victims of disabilities is currently a special concern, because children with disabilities themselves are children who have physical or mental conditions related to body structure; activity limitations are difficulties faced by individuals in carrying out a task or action; while limitation of participation is a problem experienced by individuals involved in life situations. The administration of a crime against a child has indeed been regulated in Act Number 23 of 2002, amended in Act Number 17 of 2016 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law (hereinafter referred to as UUPA), in article 81 of the BAL as the writer will explain in this study, but in the BAL and related Laws a child with a disability who is a victim of a crime moreover a rape crime is not regulated more specifically or specifically related to the prosecution of the offender if the victim's child is a child with a disability, because for the writer being an injustice for a child who has special needs, then he becomes a victim something wrong na rape even more so the limitations of children with disabilities as witnesses in the trial.

1. Children as victims of crime and children as witnesses to Criminal Acts

The victim actually has a primary and very important role in the criminal justice system, not only is the entity suffering losses and suffering from the perpetrators' actions, but more broadly the victims are the responsibility of the state in fulfilling its obligations to protect its citizens, including ensuring the operation of the criminal justice system. The position of the victim has been placed in a lower role (subordinate role) in the criminal procedure system. His role weakened as a consequence of the increasing role of the Public Prosecutor who represented the state. The victim is needed solely to prove the crime, therefore he is interrogated repeatedly both for the purpose of investigation, investigation and examination in court proceedings. Maybe the victim can hope that through his sacrifice justice can be obtained, but he has absolutely no control. The state fully determines what is just for the criminal event.

This situation is one of the criticisms of the criminal justice system, which then offers Restorative Justice as an alternative, where the crime is no longer seen solely as a conflict between citizens and the state. Recognizing criminal acts is also a conflict between victims and perpetrators, of course not just a statement but it must be seen how much the system allows a greater role in participating in determining the resolution of the conflict. Republic of Indonesia Law Number 11 Year 2012 concerning the Juvenile Justice System State Gazette of the Republic of Indonesia Year 2012 Number 153; (hereinafter referred to as SPPA Law), has encouraged efforts to give a greater but proportionate role in relation to criminal law as public law. The role of child victims, as one of the conflicting parties, in the resolution of child criminal cases is regulated more proportionally in the SPPA Law. This recognition is seen in its role which is large enough to determine whether a child criminal case can or is not resolved through diversion.

2. Children with disabilities

Children with disabilities is another term for Children with Special Needs (hereinafter referred to as ABK), is another term to replace the term Extraordinary Children (ALB) which indicates a special disorder is a child who has special features in this world is a deposit from the Almighty to be able to live life on this earth, as for children who have special needs are not children who have all the disadvantages compared to normal children in general. Both ABK and ALB disabilities are those who need special handling in their daily lives or in maximizing their various potentials. The child is a man and woman who are not yet mature, the child is also one of the designations for the period of development that is passed by everyone. All children born are different from other individuals, they are created in the best possible shape with various abilities or potentials they have. Various differences that are owned by each child can be seen from the physical form, emotions, needs, characteristics or potential that varies between one individual child with another individual child. The differences that exist in these children are usually reflected through a form of difference that children do not have in general. Especially in the form of differences in the special characteristics possessed by children to enable children to have disorders and require special needs or handling in their daily practices where these forms of difference are

often interpreted as a type of disability.

3. THE CONCEPT OF CRIMINAL ADMINISTRATION TO ADULTS WITH CHILDREN WITH DISABILITIES AS A VICTIM OF RAPE CRIMINAL ACTION

The concept or draft of making rules related to the imposition of rape crimes against perpetrators and victims of children with disabilities is indeed very necessary because Indonesia still needs much improvement both from the organization and Attitude of individual actors in each institution. As a consequence of the rule of law, the application of the principle of equality before the law must be the frontline. Equality before the law, anti-discrimination means that there is no difference between who gets a case, from the investigation to the trial. In the opinion of the compiler there are several things that can affect discrimination in the handling of legal processes, but there is one that often occurs because of suspects, defendants or convicts, even a victim who is among people who are weak, vulnerable, and or lack of knowledge. These victims are often found among people with disabilities who are discriminated against and lack their rights because access is indeed hampered.

The problem becomes serious if this is only left without firm action from the government to place the disabled with as much public access as possible, especially in enforcing the law, because they are also part of the justiciables protected by the constitution. The Law of the Republic of Indonesia Number 13 of 2006 concerning Witness and Victim Protection (hereinafter referred to as the Witness and Victim Protection Act) has indeed been passed. The law is to protect every person who is a victim of threats to become a victim again, with the rights granted such as getting an interpreter, a summary of the decision, rehabilitation to restitution. The government has also ratified international treaties, namely the Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities).

1. Form of Legal Protection for Disabled Victims of Rape Crimes

As previously explained that Indonesia has already proclaimed itself as a state of law. This brings logical consequences to all activities of government activities must be based on the law itself (Franz Magnis Suseno, 2003). There is a striking similarity between the conception of the Suseno State of Law and the concept that has been expressed by Julius Stahl, or A.V. Dicey about the rule of law. They both place human rights that need to be fought for in enforcing the rule of law. The point is that the enforcement of human rights can no longer be negotiated. In order to achieve the To Keep Government In Order, in Indonesia the provisions on Human Rights have been included in our constitution, starting from Article 28A to 28J, and even clarified in Article 29 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the Constitution 1945). Looking at the formulation of the article in the 1945 Constitution, it illustrates that there is a deep historical wound on the enforcement of human rights in Indonesia before the reform, so that the regulation of human rights is listed so in detail in the constitution that should only regulate the basic rules. We still remember that prior to the reforms, especially in the New Order, how human rights were enforced, that there was no government transparency, even individual rights were silenced tightly. Until there is no equality before the law, only the elite are treated preferentially because they have money and are able to take matters to the cassation level.

Related to the regulation on disabilities dealing with law, it is also regulated in Article 5 of the Law of the Republic of Indonesia Number 4 of 1997 concerning Disabled (hereinafter referred to as the Disability Act) and Elucidation of Article 5 of Law Number 4 of 1997 concerning Disabled Persons which regulates that every person with a disability has equal rights and opportunities in all aspects of life and livelihood which includes aspects of religion, health, education, social, employment, economy, public services, law, culture, politics, defense and security, sports, recreation, and information. The regulations governing the disabled in Article 5 of the Law on Persons with Disabilities and the clarification of Article 5 of the Law on Persons with Disabilities only focus on the social welfare of persons with disabilities while for those with disabilities dealing with the law have not been specifically regulated.

Because of the manifestation of the country's concern for the minority, the government ratified the international agreement that was passed in Law Number 19 of 2011 concerning Ratification of the Convention on the Rights of Persons with Disabilities. Article 5 of the convention basically says states parties recognize that all human beings are equal. In addition, States parties must prevent all fundamental discrimination against persons with disabilities and ensure equal and effective legal protection for persons with disabilities. According to the authors, this regulation indeed gives legitimacy to persons with disabilities not to be treated differently from normal society as usual, but the drafters have not found any regulation regarding the application of legal witnesses to perpetrators of disability crimes, resulting in hampered performance of the police, prosecutors and courts in protecting against people with disabilities. If witnesses and victims are explained in the ratification law, then it will certainly make it easier for the police of the prosecutor's office or other law enforcement institutions to complete the special properties and procedures needed in dealing with persons with disabilities related to certain cases. In this case a special room can also be made to handle the case, because the human resources used must be special as well as sign

language expertise and psychologists who know the condition of a particular mental disability that is sometimes incompatible with the age that is being carried now.

Cases of rape or other cases concerning decency in which a person with a disability is the same type of protection, which is to continue to use existing rules. The offense used by the public prosecutor also still uses the Criminal Code as stated in the intended article. This is certainly not in accordance with the objectives of the Criminal Justice System itself. Law enforcement through the criminal justice system is currently in the spotlight of various parties, even the international community considers Indonesian judicial institutions to be very bad, especially those carried out by law enforcement elements ranging from the police, prosecutors, judges to Penitentiary (LP) officers. This condition is strengthened by the Transparency International Indonesia (TII) data on the perception index which says that law enforcement agencies are the most corrupt institutions in Indonesia. Regardless of whether the data is accurate or not, at least it becomes one of the evidences of the reality of today's (criminal) portrait of law enforcement. The law, through the criminal justice system, which actually plays its function as a means to resolve conflicts, uphold truth and justice. In fact, it can be a means of social engineering (social engineering) for the community. In fact, it causes prolonged social anarchy. Not a few police who act not with conscience, but by abusing the power they have, it is not uncommon for prosecutors to extort and change cases only for material gain. Court decisions are often not accepted by the public.

Such conditions are exacerbated by the behavior of unscrupulous law enforcement officers and conduct actions that tarnish themselves and their own institutions. Bribery case that occurred in the Supreme Court (MA). This is one of the signs that law enforcement in Indonesia is indeed facing a big problem. Most law enforcement officers reduce the understanding that enforcing the law is interpreted the same as enforcing the law. This understanding has the implication that law (the law) is the center of attention. In fact, the problem of law enforcement can not only be seen from the standpoint of the law alone, but must be seen in full by involving all elements that exist, such as morals, behavior, and culture. Therefore, a new orientation and perspective is needed in law enforcement. One of the efforts to overcome the above problem is to change the perspective, mindset and paradigm of enforcement officers who no longer put the law at the center, but instead turn to humans. Humans become the center or center in the law. The law is only a guideline in upholding the law, not as normative rules that must be followed by his will. This is what became known as the idea of progressive law. Satjipto Raharjo, is the expert who first coined the idea of progressive law. The law should be able to keep abreast of the times, be able to answer the changing times with all the bases in it, and be able to serve the community by relying on the morality aspects of the law enforcement human resources themselves (Satjipto Rahardjo, 2006).

CONCLUSION

The imposition of criminal acts against children has been regulated in Act Number 23 of 2002, amended in Act Number 17 of 2016 concerning the Establishment of Government Regulations in lieu of Act Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 Regarding the Protection of Children into Law (hereinafter referred to as UUPA), in article 81 of the BAL as the writer will describe in this study, however, both in the BAL and the Law relating to children with disabilities who become victims of a crime, especially rape does not it is regulated more specifically or specifically related to the prosecution of the offender if the victim's child is a child with a disability, because for the writer it becomes an injustice for the child who has special needs, then he becomes a victim of a crime, especially the limitation of children with disabilities as witnesses in the trial. Obviously it will be difficult in the evidence in the trial, and if it has been proven whether the weighting contained in article 81 of the BAL provides a sense of justice for children with disabilities, therefore there is a need for more specific rules related to the evidence as well as additional punishment or weighting for adult offenders with children with disabilities as victims of rape.

The concept or draft of making rules related to the imposition of rape crimes against perpetrators and victims of children with disabilities is indeed very necessary because Indonesia still needs much improvement both from the organization and Attitude of individual actors in each institution. As a consequence of the rule of law, the application of the principle of equality before the law must be the frontline. equality before the law, anti-discrimination means that there is no difference between who gets a case, from the investigation to the trial. In the opinion of the compiler there are several things that can affect discrimination in the handling of legal processes, but there is one that often occurs because of suspects, defendants or convicts, even a victim who is among people who are weak, vulnerable, and or lack of knowledge . These victims are often found among people with disabilities who are discriminated against and lack their rights because access is indeed hampered.

The problem becomes serious if this is only left without firm action from the government to place the disabled with as much public access as possible, especially in enforcing the law, because they are also part of the justiciables protected by the constitution. The Law of the Republic of Indonesia Number 13 of 2006 concerning Witness and Victim Protection (hereinafter referred to as the Witness and Victim Protection Act) has indeed

been passed. The law is to protect every person who is a victim of threats to become a victim again, with the rights granted such as getting an interpreter, a summary of the decision, rehabilitation to restitution. The government has also ratified international treaties, namely the Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities). Although various efforts by the government in protecting persons with disabilities who have been victims of criminal offenses have thus been carried out, there are still obstacles that are made in practice.

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