

The Effectiveness of Sexual Violence Crime Law Towards Family Resilience

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Abstract

The Law on Sexual Violence Crime is an Indonesian law concerning sexual violence, including prevention, fulfillment of victims' rights, and recovery of the victims to regulate handling during the legal process. These kinds of sexual violence crimes include Non-Physical Sexual Harassment, Physical Sexual Harassment, Forced Contraception, Forced Sterilization, Forced Marriage, Sexual Torture, Sexual Exploitation, Sexual Slavery, and Electronic-Based Sexual Violence. It is very relevant to become a new legal umbrella in Indonesia, this is in line with the widespread cases of sexual violence that occur in society and families. Cited from the data throughout 2023, there were 5 controversial cases of sexual violence against children by their biological fathers. This article aims to analyze the effectiveness of the Law on Sexual Violence Crime Against Family Resilience in Indonesia. The research method that was used in this article is normative juridical research with the type of the research being library research or literature. The data was collected by collecting primary secondary data, namely analysis on the Law on Sexual Violence, and Family Resilience, books, previous research, and articles related to the theme. Data were analyzed using a statutory approach combined with critical legal analysis methods. The results of this study indicate that based on the principle of Family Resilience, the Law on Sexual Violence Crime is very effective as a legal umbrella, thus it can assist in resolving sexual violence cases, protecting victims from the injustice they receive.

Keywords: sexual violence, family resilience, household

Introduction

Sexual violence cases have been a concerning issue in Indonesia. Similar to an iceberg phenomenon, sexual violence cases that occurred are higher than those that are reported. Sexual violence victims are often reluctant to report their cases. Moreover, the victims are still perpetrators' closest relatives, such as a father who committed sexual violence against his biological child. Sexual violence cases are violations of human right and also a crime that humiliates the dignity of the victims. Therefore, the state must be present to protect the victims, with physical and mental protection. Besides the lack of legal protection, a bad stigma for the victims of sexual violence is attached by society. The victims are seen as 'dirty' and shameful when they are known to experience sexual violence. The preparators must bear the shame and get social sanctions. This need drove the birth of the Law on Sexual Violence Crime. Thus, people feel safer and avoid form the shadow of this act.

With the legalization of the Law on Sexual Violence Crime, it is hoped that it will be able to minimize all of the sexual acts of violence in the society and family so that every family has a Sakinah (calm) situation and family resilience is created. Family resilience can be defined

as the ability of the family to take advantage of their potential to face challenges in life, including the ability to give family functions back to their original state to face challenges and crises. It is a holistic concept that creates a framework for the system, starting from the quality of resilience and coping strategies. Family resilience is a dynamic process within the family to positive adaptation against external and internal dangers.

Methods

This article is normative juridical law research that was conducted by examining the literature study. The research method used is primary secondary data, namely analysis of the Law on Sexual Violence and Family Resilience, books, previous research, and articles related to the theme. Data were analyzed using a statutory approach combined with critical legal analysis methods.

Results

The Background Study of Law on Sexual Violence Crime

National Commission on Violence against Women (*Komnas Perempuan*) initiated the drafting of the law related to sexual violence crime in 2012 because Indonesia is considered to be in an emergency for this problem. Originally, the bill for Sexual Violence Crime was named the Elimination of Sexual Violence Bill. In May 2016, the National Commission on Violence against Women idea could only be discussed in the People's Representative Council (*DPR*). In 2021 it was proposed by the Ministry of Women's Empowerment and Child Protection (*PPPA*) to be included in the Priority National Legislation Program (*Program Legislasi Nasional*) or *Prolegnas Prioritas*. The change of the name was conducted by the Working Committee (*Panja*) so that the enforcement of the law on sexual violence would be easier to be solved. It has also been discussed and approved by various elements of society, such as experts, the National Commission on Violence against Women, and the Indonesian Ulama Council (*MUI*). The existence of this law is expected to be able to protect victims while preventing sexual violence. According to the *DPR* page, on August 30, 2021, the draft law related to the Elimination of Sexual Violence Bill was an idea by *Baleg* which was approved to be included in the National Legislation Program on January 14, 2021. Then on August 30, 2021, one of the plenary meeting schedules was to listen to the presentation of an expert team on the preparation of the initial draft of it which consisted of 11 chapters and 40 articles. At the plenary meeting, the bill changed its name to the Sexual Violence Crime Bill. (Nurmalasari, 2022)

One of the bills was approved by the People's Representative Council to become law on Tuesday, April 12, 2022. The Sexual Violence Crime Bill is needed in the two areas. First, how the victims get justice and protection so that police and prosecutors have legal standing in taking action. The background of the establishing Law on Sexual Violence Crime itself is that many sexual violence victims did not report it in practice, sexuality is still considered a disgrace or taboo. Many victims did not dare to speak up because sociologically society still considers it as something taboo, embarrassing, and tends to be disgraceful. There is no room for them in seeking justice. The second area that needs to be regulated through this bill is the matter of separating public affairs from private affairs. How sexual freedom, sexual deviance, and sexual violence can be regulated through regulation.

The Sexual Violence Crime Law itself contains 8 chapters and 93 articles that regulate prevention, handling, and punishment in cases of sexual violence from the victims' perspective. There are 9 acts of sexual violence according to this law, they are: (*Undang-Undang Tindak Pidana Kekerasan Seksual Nomor 12 Tahun 2022.pdf*, t.t.)

1. Non-physical sexual harassment
2. Physical sexual harassment
3. Forced contraception
4. Forced sterilization
5. Forced marriage
6. Sexual abuse
7. Sexual exploitation
8. Sexual slavery
9. Electronic-based sexual violence.

The crimes above are explained in the Section (1), then there are 10 other types of sexual violence that listed in article (4) section 2, they are:

1. Rape
2. Obscene acts
3. Sexual intercourse with children
4. Obscene acts against children
5. Sexual exploitation of children
6. The act violates decency which is against the will of the victim.
7. Pornography involving children or pornography that explicitly contains violence and sexual exploitation
8. Forced prostitution
9. The criminal act of trafficking in persons aimed at sexual exploitation
10. Sexual violence in the household.

As well as human trafficking which is purposed for sexual exploitation crime, money laundering which originates from sexual violence crime, and other crimes that are strongly stated as Sexual Violence Crime as regulated in the law. The Law on Sexual Violence Crime also contains content related to physical and non-physical harassment.

Regarding the regulation of sanctions and rehabilitations in the Law on Sexual Violence Crime for sexual harassment perpetrators, they can be subjected to a 12-year maximum prison sentence and a fine of IDR 1 billion, depending on what type of sexual violation they committed. The lightest fine which has been regulated by this law is for non-physical sexual harassment perpetrators, it is IDR 10 million or a maximum 9 months prison sentence. This condition is stated in Article 5 of the Law on Sexual Violence Crime. Then, for the physical sexual harassment perpetrators, various fines and punishments are applied. The maximum prison sentence for perpetrators who take advantage of someone's vulnerability is 12 years or a maximum fine of IDR 300 million. This is regulated in Article 6 of the Law on Sexual Violence Crime.

Controversial Sexual Violence Cases in Indonesia

Human sexuality is complex because it is often associated with lust and heredity. There are two categories of sexual violence, they are; moral sexuality and immoral sexuality. Moral

sexuality can be defined as healthy and good sexuality, while immoral sexuality means there are sex practices that can harm other parties and society because they are contrary to law and religious norms. Several controversial sexual acts of violence happen in Indonesia in 2023, one of them is sexual violence committed by a father against his biological child.

Cited from Purwokerto.suara.com on January 27, 2023 in Pemalang Regency, a father raped his own child and make her child got pregnant and gave birth. This immoral act has been conducting since 2018 to 2022. It was known by her mother on January 14, 2023 when the victim giving birth at the bathroom. In this case, the perpetrator was charged with article 81 Section (1) & (3) or Article 82 Section (1) & (2) of Indonesian Republic Law No. 17 of 2016 on Child Protection *jo* Article 64 Article (1) Indonesian Criminal Code, with a minimum prison sentence is 5 years and a maximum is 15 years and an additional 1/3 of the penalty because it was committed the biological parents.

Cited form Lampost.co on January 04, 2023 in West Tulangbawang, a father committed sexual violence against his 9-year-old biological child. This action had been committed since 2020 to 2022, the victim was forced by his father and threatened to be killed if she rejected, this was known by the mother on December 27, 2022. In this case the suspect was charged under Article 81 Section (3).

Cited from newsrepublika.co.id on June 14, 2023, in Ciamis, a father committed sexual violence against his biological child. This action had been committed six times repeatedly until the victim got to give birth to the child of him. The suspect was charged with Law No. 17 of 2016 on Child Protection, a prison sentence of 5 to 15 years.

Cited from beritasatu.com on February 18, 2023, in Cianjur, a father committed sexual violence against his biological child. This action had been committed hundreds of times in the last 3 years and the victim was threatened with a machete. In the end, the victim told her family about her father's actions. As reported, the perpetrator had divorced his wife, so the action was committed when there were no people in the house. In this case, the suspect was charged with Article 81 Section (1) & (3), with a minimum prison sentence is 5 years and a maximum is 15 years, and an additional 1/3 of the criminal penalty because it was committed by his biological parents.

Cited from kompas.com on May 19, 2023, in Buol Regency, a father committed sexual violence against his biological child for the last two years. The suspect is a recidivist on sexual violence who had been sentenced to 9 years in prison before because committed a similar crime to his step-daughter. In this case, the suspect was charged on Law No. 17 of 2016 on Child Protections with imprisonment for 16 years and chemical castration.

The Concept of Family Resilience

Resilience in the Great Dictionary of the Indonesian Language has a meaning about hold (strong), strength (heart, physical), and endurance. (Tim Redaksi, 2009) Family is a household that is related by blood or marriage or provides the achievement of family functions for its members in a network. (Sri Lestari, 2012) Family Resilience (*Ketahanan Keluarga*) reflects the ability and suitability of family circumstances in managing the problem they face to achieve a peaceful, happy and prosperous family. (Yohana Susan Yambise, 2016)

Increasing family resilience is very important to be implemented to reduce various problems. It is a picture of social conditions and continued development. Family resilience is divided into three parts, they are:

1. Physical resilience, related to the family adequacy in fulfilling food needs for all family members. String physical condition, and good health.
2. Economic resilience, family's effort to increase family income with all of economic activities to provide family needs.
3. Psychological resilience, the ability of family members to manage their mental health, in managing emotions, stress, motivation in life. Creating positive self-concept and satisfaction by fulfilling needs and completing family development in committing its functions. (Ade Antika, 2018)

Discussion

The cases handling sexual violence crime referred to the Indonesian Criminal Code (*KUHP*), Law on the Elimination of Domestic Violence (*PKDRT*), Law on Child Protection, and Pornography law. Those laws are indeed regulating several sexual acts of violence, but it is still needed a more comprehensive legal basis that fully takes the side of victims and survivors. In Indonesia, in punishing sexual violence perpetrators, law enforcer still uses Indonesian Republic Law No. 17 of 2016 on Child Protection jo Article 64 Section (1) of the Indonesian Criminal Code, which prison sentence of 5 to 15 years and an additional 1/3 of the criminal penalty if it is committed by the parents, imprisonment for 16 years, and chemical castration. Therefore, with the existence of the Law on Sexual Violence Crime is hoped that it can fill the vacuum of legal in preventing and judging sexual violence because Law on Sexual Violence Crime was formed with the objectives as listed in Article 3: 1. Preventing all of the sex violence crime forms; 2. Handling, protecting, and recovering the victims; 3. Doing law enforcement and rehabilitating the perpetrators; 4. Creating an environment without sexual violence; 5. Ensuring non-repetition of sexual violence. (Jaman & Zulfikri, 2022)

In the Law on Sexual Violence Crime, there are three rights obtained by the victims, they are handling rights, protection, and recovery since the occurrence of the action as stated in articles 66 and 67.

Victims' rights to handling as referred to in Article 67 Section (1) a including:

1. The right to the information for entire process and result of handling, protection, and recovery.
2. The right to obtain the handling results document.
3. The right to legal services.
4. The right to psychological reinforcement.
5. The right to the health services which covers examination, action, medical treatment.
6. The right to services and facilities that is accordance with the special needs of the victims.
7. The right to delete content that containing sexuality for sexual violence cases in electronic media.

Victims' rights on Protection as stated in Article 67 Section (1) b including:

1. Providing information regarding protection rights and facilities.
2. Providing access to information on the implementation of protection;

3. Protection from threats or violence by the perpetrators and other parties and the repetition of violence.
4. The protection from confidentiality of identity.
5. The protection from the attitudes and behaviour of law enforcement who humiliate the victims.
6. The protection from losing job, job mutation, education, or access to the politic.
7. The protection of the victims/or informer from criminal charges or civil lawsuit on Sexual Violence Crime that has been reported.

The victims' rights to recovery as referred to Article 67 section (1) c including:

1. Medical rehabilitation
2. Mental and social rehabilitation
3. Social empowerment
4. Restitution and/ or compensation
5. Social reintegration

Law on Sexual Violence Crime is very effective to be served as a legal umbrella due to the increasing of sexual violence level, especially among the closest people or family and relatives. Therefore, in imposing a sentence for sexual violence crimes perpetrators can use Law No. 17 of 2016 on Child Protection jo Article 64 section (1) Indonesian Criminal Code which collaborated with Law No. 12 of 2022 on Sexual Violence Crimes, so it can provide protection properly to the victims.

This is very relevant to the traumatized victims whose families fall apart because their physical and social psychological resilience can be healed by fulfilling the rights contained in the Law on Sexual Violence Crimes. Thus, it can start forming the resilience of a happy family again, starting from each individual with the loving support of their families, for a good future.

Conclusion

Sexual violence cases have been a concerning issue in Indonesia. Sexual violence cases are violations of human right and also a crime that humiliates the dignity of the victims. The Law on Sexual Violence Crime was created due to many victims of sexual violence did not report it in reality, sexuality is still seen as shameful and something taboo. Many victims do not have any courage to speak out due to society psychologically considers it as something taboo, something '*saru*' something that tends to be disgraceful. Moreover, the victims are still perpetrators' closest relatives, such as a father who committed sexual violence against his biological child. Therefore, the Law on Sexual Violence Crime is very effective to be served as a legal umbrella due to it will be able to provide protection properly to the victims which is relevant to the traumatized victims whose families fall apart, because of their physical and social psychological resilience can be healed by fulfilling the rights that contained in the Law on Sexual Violence Crimes.

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