



REFLECTING THE VALUES OF PANCASILA ON THE IMPLEMENTATION OF JUDGES IN CASE OF SEXUAL VIOLENCE AGAINST CHILDREN IN INDONESIA

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Abstract: *The implementation of protection and recovery of child victims of sexual violence has not been effective, this is shown by the lack of implementation of restitution and compensation for child victims of sexual violence, this in the end also hinders the implementation of rehabilitation for child victims of sexual violence. The influencing factor is the factor of legal regulations that still do not explicitly and clearly include the implementation of restitution, compensation, and rehabilitation for child victims of sexual violence, especially regarding the amount of compensation and the institution authorized to take care of it.*

Key Words: : Children, Reflecting, Sexual Violence Against.

1. INTRODUCTION:

Lately every Human beings never stop reading and listening to various mass media discussing the issue of sexual violence against children in various regions. The Annual Records of the National Commission for the Protection of Women noted that there were 1,120 cases of sexual violence in 2018. Meanwhile, the Care for Children Foundation, which was later abbreviated as KAKAK, noted that in the period 2000 there were 90 (ninety) cases of sexual violence against children with victims children up to 18 people. Furthermore, research conducted by Solihin as an academic at Gadjah Mada University together with the Indonesian Child Welfare Foundation conducted through the *Center for tourism research and development* at Gadjah Mada University (UGM), stated that *child abuse had occurred* from 1999 to 2002 in seven major cities in Indonesia. Indonesia with a total number of cases of 3,969 cases, where *child abuse* is divided into various acts of violence against children consisting of: 1) *sexual abuse* of 65.8%; 2) *physical abuse* by 19.6%; 3) *emotional abuse* by 6.3%; and 4) *child neglect* of 8.3%. Then daily compass take notes that the number of victims of violence against children also increased from 12,285 in 2019, 12,425 in 2020, and to 15,972 in 2021 .

However, the weak victims still have to run in fear from the cruel grip of the perpetrators of sexual violence, and the perpetrators of sexual violence also can not be instantly eradicated from this homeland. In the midst of a society that continues to run helter-skelter from problem violence to It is also felt that the government has not been able to protect a child at one time from the cruelty of sexual violence perpetrators in an area of this country. This inability can be demonstrated, among other things, by the Draft Law on the Elimination of Sexual Violence (RUU P-KS) which is currently being discussed by legislators who are more aware of the issue of sexual violence against children. In its development, the P-KS Bill contains many articles that read succinctly, this can be seen from the statement from the Prosperous Justice Party faction regarding the P-KS Bill. PKS through its spokesperson, Jazuli Juwaini, who is the head of the PKS faction in the DPR, loudly stated that the P-KS Bill contains many articles with multiple interpretations. Furthermore, Jazuli gave an example, for example in Article 15 of the P-KS Bill, the meaning of abortion is always accompanied by acts of coercion and pressure on the victim, this according to Jazuli will result in the interpretation that abortion carried out without coercion and pressure is allowed in this country. Like a fire that is far from burning, Jazuli's statement as above has clearly shown that the P-KS Bill actually marginalizes the position of children by containing ambiguity regarding the definition of abortion. In addition, the P-KS Bill does not clearly state the protection and restoration of the rights and conditions of victims in a clear and complete manner. This can be seen from the unregulated technical implementation of victim recovery, both in terms of the implementation system for



victim recovery and parties who have specific rights and responsibilities in terms of restoration of rights. Furthermore, the ambiguous P-KS Bill can make it difficult for law enforcers to eradicate acts of sexual violence, including against children. Based on the various explanations, it can be concluded that the P-KS Bill still has many weaknesses, this will obviously affect law enforcement in its development. Anomalies in the world of law enforcement, including in terms of criminal acts of sexual violence against children, will also ultimately damage the future of children by contracting various diseases, trauma, and the loss of children's honor. This is clearly contrary to the First, Second, and Fifth Precepts of Pancasila, and at the same time has far violated the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. So it can also be said that there are a number of provisions contained in each article in the RUU P. -KS will be able to destroy various dimensions of values and sustainability of children's lives in the context of society as a whole.

2. DISCUSSION:

Chambliss and Seidman stated that any action to be taken by the role holders, implementing agencies and legislators is always within the scope of the complexities of social, cultural, economic and political forces and so on. All social forces always work together in every effort to function the applicable regulations, apply sanctions, and in all activities of implementing institutions. Finally, the role played by legal institutions and institutions is the result of the work of various factors. The influence of social forces in the operation of this law.

Lawrence M. Friedman further stated that the law consists of components of structure, substance and culture. As for what is meant by Friedman as substance, structure, and culture, namely:

- a) The structural component is the institution created by the legal system with various functions in order to support the operation of the system. This component is possible to see how the legal system provides services for the cultivation of legal materials on a regular basis.
- b) The substantive component, which is the output of the legal system, in the form of regulations, decisions used by both the regulating and regulated parties.
- c) The cultural component, which consists of values, attitudes, perceptions, *custom, ways of doing, ways of thinking, opinions* that affect the workings of law by Lawrence M. Friedman is called legal culture. This legal culture serves as a bridge that connects the rule of law with the legal behavior of all citizens.

If you look at the theory of Chambliss, Seidman, and Friedman, it can be seen clearly that law enforcement efforts in eradicating cases of sexual violence against children cannot be viewed in pieces or partially, but need to be viewed from various aspects holistically or as a whole. Law enforcement efforts in eradicating cases of sexual violence against children in its development are influenced by several factors, as for the factors in question are:

a) Legal Regulatory Factor

If you look at the P-KS Bill, it can be concluded that there are still many similarities in each of the provisions of its articles. Article 1 point 1 of the P-KS Bill clearly states that what is meant by sexual violence are:

Every act of degrading, insulting, attacking, and/or other actions against a person's body, sexual desires, which results in a person not being able to give consent in a free state, due to inequality in power relations/or gender relations, which results in/or can result in suffering/or misery physically, psychologically, sexually, economically, socio-culturally, and/or politically.

Based on the sound of Article 1 point 1 of the P-KS Bill, it is clear that an act of sexual intercourse which makes a child an object of satisfying lust by sexually exploiting a child cannot be considered an act of sexual violence if it is carried out on consensual grounds. In other words, this article opens the door wide for adultery involving minors. Furthermore, in Article 2 of the P-KS Bill which states that:

Elimination of sexual violence is based on the principles:

- 1) Respect for human dignity and worth;
- 2) Non-discrimination;
- 3) The best interests of the victim;
- 4) Justice;
- 5) benefit; and
- 6) Legal certainty.

If you look at the statement from Article 2 of the P-KS Bill above, it is clear that the values that are the basis in the formation of the P-KS Bill are only the values contained in the second, third, fourth, and fifth precepts of



Pancasila, while the basic values as contained in the first principle of Pancasila was not contained as the basic principle for the formation of the P-KS Bill. Basically, every precept and value that composes the precepts in Pancasila cannot be separated from one another.

Article 15 of the P-KS Bill in terms of interpreting abortion is always required by acts of coercion and pressure on the victim, so that an abortion carried out without coercion and pressure on the victim cannot be interpreted as an abortion that violates the law.

Furthermore, in Article 17 of the P-KS Bill which explains sexual violence carried out in the form of abuse of power with violence, threats of violence, deception, a series of lies, or other psychological pressure so that a person cannot give real consent to marriage. This article can be used as a way for someone, either a child against his parents or another person against someone's parents, to criminalize so that a child or someone cannot marry according to the wishes of his parents or someone's parents.

Then Article 19 of the P-KS Bill which explains sexual violence committed by limiting the space of movement or depriving a person of freedom, with the aim of placing that person to serve the sexual needs of himself or others within a certain period of time. This article can open up opportunities for a wife or husband to criminalize their partner on the grounds of sexual slavery in the household.

In addition to the various problems contained in the various articles above, the P-KS Bill also does not clearly contain sexual violence against men. Whereas men can also become victims of sexual violence, including boys. KPAI or the Indonesian Child Protection Commission stated that in 2018 there were 122 boys victims of sexual violence, this is greater than the number of sexual violence against girls in 2018 which only reached 32 people. In addition, the P-KS Bill also does not clearly contain the subject of victim recovery. This can be seen from the unregulated technical implementation of victim recovery, both in terms of the implementation system for victim recovery and parties who have specific rights and responsibilities in terms of restoration of rights.

From the various explanations above, it is clear that the P-KAS Bill was made with various provisions which still have many shortcomings and have sumirities in each of its articles. Sumirity related to the absence of provisions regarding men as objects of sexual violence and sumirity in Article 15, Article 17, and Article 19 of the P-KS Bill will ultimately result in the violation of Pancasila values which have not been completely transformed in Article 2 of the P-KS Bill. KS. This can also result in the violation of human values and justice as stated in the fourth paragraph of the opening of the 1945 Constitution of the Republic of Indonesia and Article 28D number 1 of the 1945 Constitution of the Republic of Indonesia concerning equality before the law. In addition, the ambiguity issue in the P-KS Bill also violates the mandate of Article 29 number 2 of Law Number 39 of 1999 concerning equal recognition before the law. Furthermore, if you look at the thoughts of Chambliss and Seidman on this aspect of the rule of law, the influence of social and personal forces also contributed to the ambiguity of the P-KS Bill, social and personal power can be seen from the political process of forming the P-KS Bill which seems not to be based on legislative ratios. which is clear but based on the interests of a certain group who subtly wants to make the P-KS Bill a means of legalizing adultery, as well as criminalizing acts in a family cultural life and marriage culture in Indonesia. This is intended so that the eastern cultural values as contained in Pancasila turn into liberal values that free the existence of adultery, abortion and LGBT (Lesbian, Gay, Bisexual, and Transgender) movements. This can be seen from the ambiguity provisions in Article 1, Article 11, and Article 15 of the P-KS Bill.

b) Law Enforcement Factor

With the culture of the mouthpiece of the law, law enforcers cannot separate themselves from the textual elements of law that are value-free. The ambiguity in the P-KS Bill will clearly create other problems in the world of law enforcement in Indonesia. This is because law enforcers will only use the ambiguous provisions of the P-KS Bill later as the main basis in resolving the issue of sexual violence against children, where the P-KS Bill does not clearly regulate the technical issues of imposing sanctions against perpetrators of sexual violence against children. the perpetrator is still a minor, in addition to not including the recovery of child victims of sexual violence in the P-KS Bill also results in the ineffective recovery of child victims of sexual violence. Furthermore, it is not regulated regarding adultery between children and adults or children with other children which has resulted in sexual exploitation of children, in its development it will make it difficult for normative law enforcers to ensnare perpetrators of sexual violence against children. Then, with no regulation of sexual violence against men clearly, it will also make it difficult to eradicate sexual violence against boys, most of whom are victims of adult sexual abuse in this country.



c) Community Culture Factors

Furthermore, with the understanding of sexual violence in the P-KS Bill which opens the door to adultery and abortion of their own volition without any pressure, it will result in every perpetrator of sexual violence, both against boys and girls, to be more courageous. This is because in addition to the culture of being afraid to report because of the assumption that sexual violence in the family is a disgrace, the ambiguity of Article 1 and Article 15 becomes a new way for perpetrators of incest or sexual violence perpetrated by parents or siblings to children or their consciousness becomes easy to escape from. snares of law. It is this factor that is the main factor in the ineffectiveness of eradicating sexual violence when viewed on the basis of the provisions as stipulated in the P-KS Bill when it is enacted.

When looking at the various explanations as above, it can be said that in looking at law enforcement in cases of sexual violence against children it cannot be viewed from just one aspect but must be viewed as a whole from various aspects, namely the regulatory aspects, the enforcement aspects, and the cultural aspects of the community in viewing sexual violence against children. The perspective of the integrated criminal justice system states that there are sub-systems that affect the performance of the criminal justice system in achieving its goal of suppressing criminal cases in society. These sub-systems work through a mechanism called synchronization between the criminal justice sub-systems which are the parts that make up the criminal justice system. Basically this perspective is the adoption of Friedman's theory which is used in analyzing the Criminal Justice System. The forms of synchronization of the criminal justice system (SPP) are:

1) Substance Sync

Synchronization in the field of substance is synchronization related to laws and regulations. In the field of substance, the government is required to be able to create legal regulations or legislation that prioritizes the interests of the people. In its development, laws and regulations must be dynamic and continue to move following changes in society that are constantly changing and developing.

2) Structural Sync

This synchronization relates to the field of law enforcement. In this field, the role of law enforcers is in charge of enforcing all the rules mandated by the substance or legislation field. The part of this sub-system is the police, prosecutors, judges, and correctional institutions. The failure of the structural sector in enforcing the statutory sector will result in the failure of the SPP in realizing a fair enforcement of criminal law as well.

3) Culture Sync

The last synchronization is synchronization in the field of culture. Cultural synchronization relates to synchronization between criminal law policies and culture, customs, traditions, and people's mindsets. Even though the substance and culture sector is very important, if legal policies and law enforcement officials cannot be accepted and obeyed by a community because they are different from the culture, customs, traditions, and mindset of the local community, then of course the laws and regulations and the apparatus law enforcers are not able to effectively enforce existing laws.

With regard to synchronization of the criminal justice system, Muladi stated that the integrated criminal justice system is a synchronization, alignment, and integration consisting of:

- 1) Synchronization of structures, namely synchronization and harmony in the framework of relations between law enforcement agencies;
- 2) Substantial synchronization, i.e. vertical and horizontal alignment and alignment with regard to positive legal regulations;
- 3) Cultural synchronization is harmony and harmony in living the views, attitudes and philosophy as a whole that underlies the course of SPP.

In order to realize the synchronization of the criminal justice system in terms of the issue of sexual violence against children, the P-KS Bill must be based on the value of God in One God or religious morality, the values of just and civilized or humanist humanity, the value of Indonesian Unity or the interests of the nation and state, the value of Democracy Led by Wisdom/Wisdom in Representative Deliberation or democracy, and the value of Social Justice for All Indonesian People or justice. In addition to Pancasila, criminal law must also be based on general legal principles recognized by all nations in the world or *the general principles of law recognized by the community of nations*. Furthermore, the idea of balance in criminal law requires that criminal law also pays attention to the losses suffered by the victim. To fulfill this aspect, additional punishment is needed in the form of payment of fines and the fulfillment of customary obligations, so that apart from the perpetrator getting the punishment he deserves, the victim also gets the compensation he deserves. In addition, the idea of balance in criminal law does not make imperative criminal provisions the main source, but the most important source of criminal law is the judge's consideration and conviction.



In order to realize this idea, the drafting of the P-KS Bill should not only look at the textuality of the law but should also pay attention to religious values both spiritually and materially, human values or human rights, the value of unity, the value of democracy, and the value of justice. This is what Barda Nawawi Arief referred to above as:

Criminal law reform is essentially an effort to reorient and reevaluate the socio-political, socio-philosophical, socio-cultural values that underlie and provide content for the normative and substantive contents of criminal law that are aspired to..... And , the national legal system in addition to being able to support national development and the needs of international relations, must also be sourced and not ignore the values and aspirations that live and develop in society. -customary law values or religious legal values.

To be able to realize the above, Barda Nawawi stated that:

The importance of a humanistic approach in the use of criminal sanctions does not only mean that the sanctions imposed on violators must be in accordance with civilized human values, but also must be able to make violators aware of the importance of human values and social values in society.

3. CONCLUSION:

Based on various explanations in the discussion of this paper, it can be concluded that:

- a) Whereas there is ambiguity regarding the definition of sexual violence which can open the door to the legalization of adultery and abortion, as well as criminalization in terms of marriage and domestic life, as stated in Article 1, Article 11, Article 15, Article 17, and Article 19 of the P-KS Bill;
- b) The ambiguity in the P-KS Bill will complicate law enforcement regarding cases of sexual violence against children when the P-KS Bill is enacted;
- c) It will be easier for perpetrators of sexual violence against children to escape from legal snares if the P-KS Bill is enacted with all the ambiguity of its provisions;
- d) There is a need for synchronization of the criminal justice system in various aspects in overcoming the increasing problem of sexual violence against children;
- e) For this reason, the P-KS Bill needs to be re-harmonized with Pancasila which is the ideology of the Indonesian nation, *leitstar*, the source of all legal sources, as well as the legislative ratio. criminal law politics in Indonesia.

Prior to the enactment of the P-KS Bill, it was re-examined with the touchstone of Pancasila and the constitution and the values that live in Indonesian society. Then all the provisions that are still vague need to be changed again. Furthermore, lastly, various provisions that have not been published as described above need to be clearly stated so as not to result in multiple interpretations of the provisions of the P-KS Bill.

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