

The Relevance of the Values of Pancasila to Criminal Action Regulations Sexual Violence against Children

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Abstract. Law enforcement in cases of sexual violence against children still has various kinds of obstacles, one of which is the regulation of criminal acts of sexual violence which still does not contain restoration of the rights of children who are victims of sexual violence. This article using a normative juridical method seeks to examine the ability of Act No. 12 of 2022 concerning Crimes of Sexual Violence in realizing the restoration of the rights of child victims of sexual violence. In fact, it was found that there is ambiguity regarding the definition of sexual violence which can open the door to the legalization of adultery and abortion, as well as the criminalization of marriage and domestic life, as stated in Article ¹, Article 11, Article 15, Article 17 and Article 19 of Act No. 12 of 2022 Concerning Crimes of Sexual Violence, legal ratiocriminal law politics in Indonesia.

Keywords: Children; Sexual; Violence.

1. Introduction

Lately, every human being has never stopped 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 record that there have been 1,120 cases of sexual violence in 2018.¹ Meanwhile the Concern for Children Foundation, which was later abbreviated as KAKAK, noted that in the 2000 period there were 90 (ninety) cases of sexual violence against children with 18 children as victims. Furthermore, research was conducted by Solihin as an academic at Gadjah Mada University together with the Indonesian Child Welfare Foundation which was carried out through Center for tourism research and development Gadjah Mada University (UGM), stated that this had happened child abuse from 1999 to 2002 in seven major cities in Indonesia with a total number of cases of 3,969 cases, where child abuse are divided into various

¹ Chantika Bathari, Open Your Conscience And Care About Sexual Violence, Accessed via geotimes.co.id, on 12 May 2021.

acts of violence against children consisting of: 1) sexual abuse by 65.8%; 2) physical abuse by 19.6%; 3) emotional abuse of 6.3%; and 4) child neglect by 8.3%.² Then Kompas daily noted that the number of victims of violence against children has also increased from 12,285 in 2019, 12,425 in 2020, and to 15,972 in 2021.³

Even so, victims who are weak must still run in fear from the vicious clutches of perpetrators of sexual violence, and perpetrators of sexual violence cannot be eradicated from this country in an instant. In the midst of a society that continues to run headlong from the problem of violence against children, it is also felt that the government has not been able to protect a child at one time from the cruelty of perpetrators of sexual violence in an area in this country. One of the reasons for this inability is the Draft Act No. 12 of 2022 concerning Crimes of Sexual Violence which is currently being discussed by legislators who understand more about the issue of sexual violence against children today.

It's like a fire far from roasting Jazuli's statement as above has shown clearly that Act No. 12 of 2022 Concerning Crimes of Sexual Violence actually marginalizes the position of children by including ambiguity regarding the definition of abortion. In addition, Act No. 12 of 2022 concerning Crimes of Sexual Violence also does not clearly and completely contain the protection and restoration of the rights and conditions of victims. This can be seen from the fact that technical arrangements for the implementation of victim recovery are not regulated, both in terms of the system for implementing victim recovery and the parties who have specific rights and responsibilities in terms of recovery of rights. Furthermore, Act No. 12 of 2022 concerning Crimes of Sexual Violence which is ambiguous can make it difficult for law enforcers to eradicate acts of sexual violence including against children.

Also on law enforcement in its development. Anomalies in the world of law enforcement, including in the case of crimes of sexual violence against children, will eventually result in the destruction of the child's future by contracting various diseases, traumatic events, and loss of the child's honor. This is clearly contrary to the First, Second, and Fifth Precepts of Pancasila, as well as far violating the fourth paragraph of the mandate of the preamble to the 1945 Constitution of the Republic of Indonesia. So it can also be said that there is a summary of the provisions contained in each article in the 1945 Constitution. Act No. 12 of 2022 concerning Crimes of Sexual Violence will be able to damage various dimensions of values and the sustainability of children's lives in the context of society as a

² M. Anwar Fuadi, Psychological Dynamics of Sexual Violence: A Phenomenological Study, *Psychoislamika, Journal of Islamic Psychology, Psychological and Islamic Development Research Institute (LP3K)*, Volume 8, No. 2, 2011, p. 192.

³ [https://nasional.kompas.com/read/2022/01/20/12435801/ Reports of Cases-Kerousan-terhadap-anakdanperempuan-meningkat-3year#:~:text=Numbers%20reports%20cases%20violence%20against,in%202020%2C%20and%20to%2015.972](https://nasional.kompas.com/read/2022/01/20/12435801/Reports_of_Cases-Kerousan-terhadap-anakdanperempuan-meningkat-3year#:~:text=Numbers%20reports%20cases%20violence%20against,in%202020%2C%20and%20to%2015.972), accessed on June 12, 2021.

whole.

2. Research Methods

This research use the normative juridical approach methods with the type of qualitative. The data collect from the library research and data was reduced for the analysis data.

3. Result and Discussion

Chambliss and Seidman stated that any action to be taken by the role holders, implementing agencies or legislators is always within the scope of the complexity of social, cultural, economic and political forces and so on. All social forces always work in every effort to function the applicable regulations, apply sanctions, and in all the activities of implementing institutions. Finally, the role played by legal institutions and institutions is the result of the operation of various factors.⁴⁵

Lawrence M. Friedman further stated that the law consists of the components of structure, substance and culture. As for what Friedman meant by substance, structure, and culture, namely:⁶

1. 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 makes it possible to see how the legal system provides services for the regular processing of legal materials.
2. The substantive component, namely as the output of the legal system, in the form of regulations, decisions that are used both by those who regulate and those who are regulated.
3. The cultural component, which consists of values, attitudes, perceptions, custom, ways of doing, ways of thinking, opinions Lawrence M. Friedman who influences the operation of law is called legal culture. It is this legal culture that functions as a bridge link between legal regulations and the legal behavior of all citizens.

When looking 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

⁴ William J. Chambliss and Robert B. Seidman in Esmi Warassih, Legal Institutions A Sociological Study, UNDIP Press, Semarang, 2011, p. 10.

⁵ Ibid., p. 11.

⁶ Esmi Warassih, Legal Institutions A Sociological Study, (Semarang: Diponegoro University Publishing Agency, 2011), p. 28.

various aspects holistically or as a whole. Law enforcement efforts in eradicating cases of sexual violence against children in their development are influenced by several factors, while the factors referred to are:

1. Legal Regulation Factors

If you look at Act No. 12 of 2022 concerning Crimes of Sexual Violence, it can be concluded that there are still many summaries in each of the provisions of its articles. Article 1 point 1 of Act No. 12 of 2022 concerning Crimes of Sexual Violence clearly states that what is meant by sexual violence is:

Any act of humiliating, humiliating, attacking, and/or other acts against a person's body, sexual desire, which results in a person being unable to give consent in a free state, due to unequal power relations/or gender relations, which results/or may result in suffering/or misery physical, psychological, sexual, economic, socio-cultural, and/or political losses.

Based on the wording of Article 1 point 1 of Act No. 12 of 2022 concerning Crimes of Sexual Violence, it is clear that acts of sexual relations which make children an object of satisfaction by exploiting children sexually cannot be said to be acts of sexual violence if they are committed on the basis of like. In other words, this article opens a wide door for the occurrence of adultery involving minors. Furthermore, in Article 2 of Act No. 12 of 2022 concerning Crimes of Sexual Violence which states that:

The elimination of sexual violence is based on the following principles: 1. Respect for human dignity;

- 1) Non-discrimination;
- 2) The best interests of the victim;
- 3) Justice;
- 4) Benefits; and
- 5) Legal certainty.

When looking at the statement from Article 2 of Act No. 12 of 2022 concerning Crimes of Sexual Violence above, it is clear that the values that became the basis for the formation of Act No. 12 of 2022 concerning Crimes of Sexual Violence are only the values contained as in the second, third, fourth and fifth precepts of Pancasila while the basic values as contained in the first precept of Pancasila are not contained as the basic principles for the formation of Act No. 12 of 2022 concerning Crimes of Sexual Violence. Basically, every precept and value that makes up the precepts in Pancasila cannot be separated from one another.

Article 15 of Act No. 12 of 2022 Concerning the Crime of Sexual Violence in terms

of interpreting abortion is always accompanied by an act of coercion and pressure on the victim, so that an abortion that is carried out without coercion and pressure on the victim cannot be interpreted as an abortion that violates the law.

Furthermore, in Article 17 of Act No. 12 of 2022 concerning Crimes of Sexual Violence which explains sexual violence carried out in the form of abuse of power by violence, threats of violence, deception, series of lies, or other psychological pressure so that a person cannot give consent that is actually to get married. This article can be used as a way for someone, whether a child against their parents or another person against someone's parents, to criminalize so that a child or someone cannot marry according to the wishes of their parents or someone's parents.

Then Article 19 of Act No. 12 of 2022 Concerning Sexual Violence Crimes which explains sexual violence which is carried out by limiting one's space for movement or depriving a person of freedom, with the aim of placing that person to serve his own or other people's sexual needs within a certain period of time. This article can open opportunities for a wife or husband to do criminalization of their partners on the grounds of domestic sex slavery.

In addition to the various problems contained in the various articles above, Act No. 12 of 2022 Concerning Crimes of Sexual Violence also does not clearly contain sexual violence against men. Even though men can also be victims of sexual violence, including boys. KPAI or the Indonesian Child Protection Commission stated that in 2018 there were 122 male victims of sexual violence, this was higher than the number of sexual violence against girls in 2018 which only reached 32 people.⁷In addition, Act No. 12 of 2022 concerning Crimes of Sexual Violence also does not clearly contain the recovery of victims. This can be seen from the fact that technical arrangements for the implementation of victim recovery are not regulated, both in terms of the system for implementing victim recovery and the parties who have specific rights and responsibilities in terms of recovery of rights.

From the various explanations above it is clear that Act No. 12 of 2022 Concerning the Crime of Sexual Violence was made with various provisions which still have many deficiencies and have a summary in each of its articles. Sumiritas related to the absence of provisions regarding men as objects of sexual violence and sumiritas in Article 15, Article 17, and Article 19 of Act No. 12 of 2022 Concerning Sexual Violence Crimes will ultimately result in violation of Pancasila values which are not yet completely transformed in Article 2 of Act No. 12 of 2022 Concerning Crimes of Sexual Violence. This can also result in the violation of human values and justice as stated in the fourth paragraph of the opening of the 1945

⁷ Alfian Hilmi, KPAI: Victims of Sexual Violence Dominated by Men in 2018, Accessed vianasional.tempo.co, On 12 May 2020

Constitution of the Republic of Indonesia and Article 28D number 1 of the 1945 Constitution of the Republic of Indonesia regarding equality before the law. Apart from that, the ambiguity issue in Act No. 12 of 2022 concerning Crimes of Sexual Violence also violates the mandate of Article 29 number 2

Act No. 39 of 1999 concerning equal recognition before the law. Furthermore, if you look at Chambliss and Seidman's thoughts on this aspect of the legal regulation, the influence of social and personal forces also contributes to the problem of ambiguity in Act No. 12 of 2022 concerning Crimes of Sexual Violence, social and personal forces can be seen from the political process of forming the Act No. 12 of 2022 concerning the Crime of Sexual Violence which seems not based on a clear legal ratio but is based on the interests of a particular group which subtly wants to make Act No. 12 of 2022 concerning the Crime of Sexual Violence a means of legalizing adultery, as well as acts of criminalization in an order of family cultural life and marriage culture in Indonesia. This is intended so that eastern cultural values as contained in Pancasila turn into liberal values that free adultery, abortion and LGBT (Lesbian, Gay, Bisexual, and Transgender) movements. This can be seen by the ambiguity provisions in Article 1, Article 11, and Article 15 of Act No. 12 of 2022 concerning Crimes of Sexual Violence.

2. Law Enforcement Factors

With the existence of a law mouthpiece culture, law enforcers cannot separate themselves from the value-free textual elements of law. The ambiguity in Act No. 12 of 2022 concerning Crimes of Sexual Violence will clearly create other problems in the world of law enforcement in Indonesia. This is because law enforcers will only make the ambiguous provisions of Act No. 12 of 2022 concerning Crimes of Sexual Violence later as the main basis in resolving the problem of sexual violence against children, which is Act No. 12 of 2022 concerning Crimes of Sexual Violence. does not clearly regulate the technical matters of imposing sanctions on perpetrators of sexual violence against children where the perpetrators are also minors, Apart from that, the absence of recovery for child victims of sexual violence in Act No. 12 of 2022 Concerning Crimes of Sexual Violence also results in the ineffective recovery of child victims of sexual violence. Furthermore, the matter is not regulated adultery between a child and an adult or a child and another child which has resulted in sexual exploitation of children, in its development will make it difficult for normative law enforcement to prosecute perpetrators of sexual violence against children. Then, by not clearly regulating sexual violence against men, it will also make it difficult to eradicate sexual violence against boys, most of whom are victims of adult sexual abuse in this country.

3. Community Culture Factors

Furthermore, with the definition of sexual violence in Act No. 12 of 2022 concerning Crimes of Sexual Violence which opens the door to adultery and abortion with their own will without any pressure, it will result in every perpetrator of sexual violence against both boys and girls to be more courageous. This is because in addition to the existence of a culture of fear of reporting because of the notion that sexual violence in the family is a disgrace, the ambiguity of Article 1 and Article 15 has become a new way for perpetrators of incest or sexual violence perpetrated by parents or siblings to children or their conscience makes it easy to escape from legal snares.

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 as a whole must be seen from various aspects namely the regulatory aspect, the enforcement aspect of the rules, as well as the cultural aspect of society in viewing sexual violence against children. The perspective of an integrated criminal justice system states that there are sub-systems that affect the performance of a 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 subsystems which form part of the criminal justice system. Basically this perspective is the adoption of Friedman's theory used in analyzing the Criminal Justice System. The forms of synchronization of the criminal justice system (SPP) are:⁸

4. Substance Synchronization

Synchronization in the field of substance is synchronization related to laws and regulations. In this 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.

5. Structural Synchronization

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 field of substance or legislation. The parts of this subsystem are 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 fair criminal law enforcement as well.

⁸ Sugiharto, *Criminal Justice System And Overview Of Criminal Justice Systems In Various Countries*, UNISSULA, Semarang, 2012, p. 21-24.

6. Culture Synchronization

The last synchronization is synchronization in the field of culture. Cultural synchronization is related 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 society because they are different from the culture, customs, traditions, and mindset of the local community, then of course laws and apparatus Law enforcers are unable to effectively enforce existing laws.

With regard to the synchronization of the criminal justice system, Muladi stated that an integrated criminal justice system is a synchronization, harmony and integration consisting of:⁹

1. Structural synchronization, namely synchronization and harmony within the framework of relations between law enforcement agencies;
2. Substantial synchronization, namely simultaneity and harmony both vertically and horizontally related to positive legal regulations;
3. Cultural synchronization is the excitement 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 problem of sexual violence against children is Act No. 12 of 2022 Concerning the Crime of Sexual Violence must be based on the values of the One God or religious morality, the values of Just and Civilized Humanity or humanism, the values of Indonesian Unity or the interests of the nation and state, the values of Democracy Led by Wisdom/Wisdom in Deliberative Representatives 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 law principles that are recognized by all nations in the world the general principles of law recognized by the community of nations.¹⁰ Furthermore, the idea of balance in criminal law requires that criminal law also pays attention to the losses suffered by victims. To fulfill this aspect, additional punishment is needed in the form of payment of fines and fulfillment of customary obligations, so that in addition to the offender getting an appropriate sentence, the victim also gets compensation accordingly. Besides that, the idea of balance in criminal law also does not make imperative criminal provisions as the main source, but the most important source of criminal law is the consideration and conviction of the judge.¹¹ In order to realize this idea, the drafting of Act No. 12 of 2022 Concerning Sexual Violence Crimes should not only look at the textuality of the law, but also pay attention to religious

⁹ *ibid.*, p. 25.

values both spiritually and materially, human values or human rights, the value of unity, democratic values, and the value of justice.

4. Conclusion

Prior to the enactment of Act No. 12 of 2022 concerning the Crime of Sexual Violence, it was tested again with the touchstone of the Pancasila and the constitution as well as the values that live in Indonesian society. Then all the provisions that are still brief need to be changed again. Furthermore, finally, 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 Act No. 12 of 2022 concerning Crimes of Sexual Violence.

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