



Legal Protection Of Victims Of Mental Retardation Rape As A State Of Helplessness

Perlindungan Hukum Terhadap Korban Perkosaan Yang Mengalami Keterbelakangan Mental Dalam Keadaan Tidak Berdaya

Citra Arga Fajar Diva ¹⁾; Efrila ²⁾; Ahmad Jaeni ³⁾

^{1,2,3)} Program Pascasarjana Sekolah Tinggi Hukum Militer

Email: ¹⁾ citradiva14@gmail.com ; ²⁾ sthm.efrila@gmail.com ; ³⁾ ahmad.jaeni@sthm.ac.id

ARTICLE HISTORY

Received [01 September 2024]

Revised [10 Oktober 2024]

Accepted [21 Oktober 2024]

KEYWORDS

Reasons, Domestic Violence, Divorce.

This is an open access article under the [CC-BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license



ABSTRAK

Perkosaan merupakan salah satu bentuk kekerasan seksual yang tidak hanya melanggar hak asasi manusia, tetapi juga menimbulkan trauma fisik dan psikologis yang mendalam bagi korban. Dalam konteks ini, korban dengan retardasi mental berada dalam posisi yang sangat rentan dan sering kali tidak mampu membela diri atau memberikan persetujuan yang sah. Kondisi ini menjadikan mereka sebagai kelompok yang memerlukan perlindungan khusus di bawah hukum. Penelitian ini bertujuan untuk menganalisis perlindungan hukum terhadap korban perkosaan yang mengalami retardasi mental sebagai keadaan tidak berdaya berdasarkan undang-undang yang berlaku di Indonesia. Perkosaan merupakan bentuk kekerasan seksual yang melanggar hak asasi manusia dan mengakibatkan trauma fisik maupun psikologis yang mendalam bagi korban. Korban dengan retardasi mental memiliki kerentanan yang lebih tinggi dan memerlukan perlindungan khusus. Pendekatan yang digunakan dalam penelitian ini adalah yuridis normatif, dengan menganalisis peraturan perundang-undangan terkait, termasuk Kitab Undang-Undang Hukum Pidana (KUHP), Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga, dan Undang-Undang Nomor 8 Tahun 2016 tentang Penyandang Disabilitas. Hasil penelitian menunjukkan bahwa meskipun telah ada peraturan yang memberikan perlindungan hukum bagi korban perkosaan, implementasi dan penegakan hukum masih menghadapi berbagai kendala. Faktor-faktor seperti stigma sosial, kurangnya pemahaman tentang retardasi mental, dan keterbatasan sumber daya dalam sistem peradilan sering kali menghambat perlindungan yang efektif bagi korban. Penelitian ini merekomendasikan peningkatan sosialisasi dan pelatihan bagi aparat penegak hukum, serta penyediaan layanan pendukung yang lebih baik untuk korban dengan retardasi mental.

ABSTRACT

Rape is a form of sexual violence that not only violates human rights, but also causes deep physical and psychological trauma to the victim. In this context, victims with mental retardation are in a very vulnerable position and are often unable to defend themselves or give legitimate consent. This condition makes them a group that needs special protection under the law. This study aims to analyze the legal protection of rape victims who experience mental retardation as a state of helplessness based on the applicable laws in Indonesia. Rape is a form of sexual violence that violates human rights and results in deep physical and psychological trauma for the victim. Victims with mental retardation have a higher vulnerability and require special protection. The approach used in this study is normative juridical, by analyzing related laws and regulations, including the Criminal Code (KUHP), Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and Law Number 8 of 2016 concerning Persons with Disabilities. The results of the study show that although there are regulations that provide legal protection for rape victims, the implementation and enforcement of the law still face various obstacles. Factors such as social stigma, a lack of understanding of mental retardation, and limited resources in the justice system often hinder effective protection for victims. This study recommends increased socialization and training for law enforcement officials, as well as the provision of better support services for victims with mental retardation.

INTRODUCTION

Humans as living beings naturally have a desire to have sexual relations in order to continue their genetic genealogy. However, this desire should not be done simply because men and women are creatures who have the intellect and mind to know and apply the norms that exist in society. In fact, many humans do not pay attention to themselves as human beings themselves, this can be seen by the rampant rape cases that have occurred so far. By definition, rape or in United Kingdom as rape comes from the Latin word rapere which means to steal, force, rob, or take away.

Provisions related to rape in Indonesia can only be seen in the Criminal Code which defines rape as follows:

Article 285 of the Criminal Code: "Whoever by violence or threat of violence forces a woman to have sex with him outside of marriage, is threatened with rape with a maximum prison sentence of twelve years." Rape does not only occur in normal women, but in reality it is also experienced by women or someone who has mental limitations which in this case is referred to as Mental Retardation.

Everyone is born with different circumstances. Not everyone is born perfect. Some people are born with a physical or mental state that is less than normal people or has limitations. This is what triggers the different treatment of people who have these limitations. This situation where a person's physical or mental imperfection is often called a disability or a person with a disability. The term commonly used by the community is slightly different and gives its own stigma to people with disabilities.

Blindness is another word for Mental Retardation (mental retardation). Tuna means loss and Grahia means mind. Mental retardation (Mental Retardation atau Mentally Retarded) means mentally retarded. Handicapped is a term used to refer to children who have below-average intellectual abilities and are characterized by limited intelligence and inability to communicate socially.

A state of helplessness refers to a condition in which a person does not have the ability or strength to protect himself or herself or act effectively in a given situation. This condition can be caused by a variety of factors including physical, mental, or situational, resulting in the individual being in a vulnerable position and unable to take the necessary measures to protect himself.

A state of helplessness is a condition in which a person is unable to provide resistance or refuse sexually due to physical or mental limitations. In the context of criminal law, helplessness is often associated with victims of crimes who are in a position where they are unable to defend themselves from criminal acts. These circumstances can include a variety of conditions such as physical incapacity, mental incapacity, or situations in which the individual is under the influence or control of others.

There are several examples of rape cases with victims of mental retardation, including

1. Rape of a Girl with Mental Retardation in Pasangkayu Regency, West Sulawesi, in court decision number 102/Pid.B/2020/PN Pky.
2. Rape of a Girl with Mental Retardation in Central Sumba Regency, East Nusa Tenggara, in court decision number 141/Pid.B/2020/PN Wyb.
3. Rape of a Girl with Mental Retardation in Siak Regency, Riau, in court decision number 22/Pid.B/2020/PN Sak.
4. Rape of a Girl with Mental Retardation in Tanah Bumbu Regency, South Kalimantan, in court decision number 65/Pid.B/2021/PN Bln.

The protection of crime victims in the process of resolving the crime of rape is not only important for the victim and his family but also for the broader interest, namely for the sake of crime prevention on the one hand and on the other hand for the benefit of the perpetrator of the crime itself.

Criminal imposition in the form of an obligation to provide compensation to the victim will develop the responsibility of the perpetrator because in its implementation the active role of the perpetrator is needed. The imposition of criminal sanctions in the form of the obligation to provide compensation to the victim, according to the community's view, will also instill the impression that the perpetrator has not only been sentenced to criminal sanctions but has also paid his "profits" in the form of his concern for providing compensation to the victim from his actions.

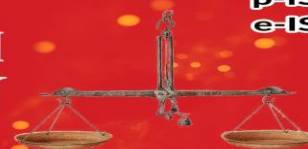
LITERATUR REVIEW

Legal Protection

Considering that our country is a country of law, legal protection is one way to enforce the law in our country. With legal protection, this means that the existing legal rules are implemented properly (Satijipto Raharjo, 2000). In this case regarding people with disabilities, according to Article 1 number 5 of Law Number 8 of 2016 concerning Persons with Disabilities, Protection is an effort made consciously to protect, foster, and strengthen the rights of Persons with Disabilities. Regarding the definition of legal protection, it is also explained in Article 1 number 8 of Law Number 31 of 2014 concerning Protection of Witnesses and Victims, Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims which must be implemented by LPSK or other institutions in accordance with the provisions of this Law. Several legal experts have also expressed opinions regarding the definition of legal protection itself, including: a. According to Satijipto Raharjo, Legal Protection is defined as providing protection to human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law. b. According to Pjillipus M. Hadjon, legal protection for the people is a preventive and repressive government action (Pjillipus M. Hadjon, 1987).

Victim

A victim is someone who suffers direct damage as a result of an action or deed carried out by another person who carries out a criminal act. According to Article 1 paragraph (3) of Law Number 31 of



2014 concerning Protection of Witnesses and Victims, a victim is someone who experiences physical, mental, and/or economic suffering caused by a criminal act (Endang Rochyadi, 2005)

Rape Crime

The term criminal act is a translation of the Dutch language, namely *Strafbaarfeit* or delict which comes from the Latin *delictum*. While the word "feit" itself in Dutch means "part of reality" or "een gedeelte van werkelijkheid" while "strafbaar" means "punishable", so literally the word "strafbaar feit" can be translated as "part of a reality that can be punished. Meanwhile, according to the big Indonesian dictionary, rape is interpreted as force, violence, brave, strong, mighty. While to rape means to subdue with violence, to rape, to violate with violence. The crime of rape is determined in Article 285 of the Criminal Code Chapter XIV concerning Crimes Against Morality, namely: "Anyone who with violence or the threat of violence forces a woman to have sex with him outside of marriage, is threatened because of rape with a maximum imprisonment of twelve years"

METHODS RESEARCH

This study uses a normative juridical method to determine legal justice for rape victims with mental retardation as a state of helplessness based on the applicable laws in Indonesia. This method involves analyzing laws and regulations such as the Criminal Code (KUHP), Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and Law Number 8 of 2016 concerning Persons with Disabilities, as well as relevant court decisions. This study examines the extent to which these regulations provide effective and fair legal protection for victims with mental retardation, taking into account aspects of implementation and law enforcement in the field.

HASIL DAN PEMBAHASAN

Legal Protection is a protection provided to the subject of hukun in the form of legal instruments, both preventive and repressive, both written and unwritten. In other words, legal protection is an illustration of the function of law, namely the concept where the law can provide justice, order, certainty, usefulness and peace.

The definition of legal protection according to experts is as follows:

1. According to Satjipto Raharjo, Legal Protection is defined as providing protection to human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights provided by the law.
2. According to Philipus M. Hadjon, Legal Protection is the protection of dignity and dignity, as well as the recognition of the protection of human rights owned by legal subjects based on the legal provisions of authority.
3. According to CST Kansil, Legal Protection is a variety of legal remedies that must be given by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party.
4. According to Philipus M. Hadzon, Legal Protection is a collection of regulations or rules that will be able to protect one thing from another. Regarding consumers, it means that the law provides customer rights from something that results in the non-fulfillment of these rights.
5. According to Setiono, legal protection is an action or effort to protect society from arbitrary acts by rulers that are not in accordance with the law, to realize order and tranquility so as to allow humans to enjoy their lives as human beings.
6. Legal protection aims to protect the community from dangers and actions that can harm the interests of the public, both lives, property, and the running of the government. In addition to providing a sense of security and means for the realization of justice and order in society, women are no exception.

In general, rape is a sexual crime that takes place when a person or can force another person to have sexual intercourse in the form of vaginal or anal penetration with the penis, other limbs such as legs or special objects, either through violence or threats.

Mental retardation is included in Intellectual Disability disorders, namely impaired thinking functions because their intelligence level is lower than normal people in general, including slow learning of things, Down syndrome and grahita disability. In general, the meaning of Mental Retardation is someone who has special needs and has physical, intellectual, social, and emotional retardation that requires certain treatment in order to develop with maximum ability.

The condition of the victim who is in the category of "helpless" is a person who has the potential or potential to become a victim of a criminal act because of his helplessness. This condition of helplessness allows others with malicious intentions to exploit or harm the victim. On the basis of this description, it is basically necessary to provide adequate legal protection for victims in the "helpless" category.

Law of the Republic of Indonesia Number 8 of 2016 concerning Persons with Disabilities as has been known to all states that persons with disabilities, including in this case Mental Retardation have the right to justice and legal protection as included in article 9, namely: The right to justice and legal protection for Persons with Disabilities includes the right to:

1. For equal treatment before the law;
2. Recognized as a legal subject;
3. Owning and inheriting movable or immovable property;
4. Controlling financial matters or appointing a person to represent his or her interests in financial matters;
5. Memperoleh access against Service banking and non-banking services;
6. Obtaining the provision of accessibility in judicial services;
7. For protection from any pressure, violence, persecution, discrimination, and/or deprivation or expropriation of property rights;
8. Selecting and appointing persons to represent their interests in civil matters in and out of court; and
9. Intellectual property rights are protected.

The maximum penalty given to the perpetrator of illegal intercourse in the formulation of Article 286 of the Criminal Code, which is 9 (nine) years, according to the author, is still too light because it is equated with several provisions in Articles 285, 287, and 288 of the Criminal Code. The punishment given to the perpetrator in Article 286 of the Criminal Code should be heavier than other illegal sexual intercourse crimes because the perpetrator realizes and realizes that the victim is a "helpless" person. People who are aware and aware of this must of course protect, protect, and guard the "helpless" person instead of having intercourse that is carried out illegally against him. In addition, future policymakers must evaluate the provisions of Article 286 of the Criminal Code by providing an expanded meaning and a more comprehensive explanation of the meaning of "helpless" in Article 286 of the Criminal Code. In terms of protection, the victim's position is victimologically acting as a witness to the victim and a party that must be protected by a guarantee of legal certainty. It is important to revise the provisions of Article 286 of the Criminal Code, especially regarding the existence of a minimum sentence in addition to the maximum sentence as well as the need to be given additional punishment in addition to imprisonment.

Article 285 of the Criminal Code states: "Whoever by violence or threat of violence forces a woman to have sex outside of marriage, is threatened with rape, punishable by imprisonment for a maximum of twelve years."

Article 285 of the Criminal Code contains several important elements that must be met to classify an act as rape: Violence or Threat of Violence: The act of rape must be carried out using physical violence or threats of violence against the victim. Coercion: The perpetrator forces the victim to have sex. Outside of Marriage: The act is carried out outside of the legal marital relationship.

Victims of mental retardation rape have a special vulnerability that makes them unable to give legal consent or resist acts of violence or threats of violence. This condition causes them to be in a state of helplessness. Some of the key points in this context are:

Unable to Give Consent: Victims with mental retardation may not have the capacity to understand the situation and give legitimate consent. In many cases, even if there is no explicit physical violence, coercion can occur because the victim is unable to resist or resist.

Helplessness as an Element of Violence: Although Article 285 of the Criminal Code emphasizes violence or the threat of violence, the victim's helplessness with mental retardation can be considered a form of psychological violence or coercion. Therefore, the act of rape against the victim with mental retardation fulfills the coercive element in Article 285.

Given the special vulnerability of victims with mental retardation, the law must be interpreted and applied taking into account their helpless condition. This means that law enforcement must ensure that the victim's mental state is recognized as a reinforcing factor in the rape case under Article 285.

Although Article 285 of the Criminal Code provides a legal basis for cracking down on rapists, the implementation of the law in cases of victims with mental retardation faces several challenges:

The first challenge is proof of coercion. In many cases, it is difficult to prove an element of violence or a threat of violence if the victim is unable to explain their experience in detail due to mental limitations. Then the lack of understanding of law enforcement officials. Law enforcement officials may lack understanding of mental retardation and how it affects the victim's ability to give consent or resist



coercion. The next challenge is stigma and discrimination. Victims with mental retardation often face stigma and discrimination that prevents them from reporting crimes and getting adequate protection.

To ensure legal justice for victims of mental retardation rape under Article 285 of the Criminal Code, several steps must be taken:

1. Special Training for Law Enforcement Officials: Law enforcement officials need to be trained to recognize and understand the condition of mental retardation and how to handle cases involving victims with special needs.
2. Provision of Legal and Psychological Assistance: Victims should be provided with access to adequate legal and psychological assistance to assist them in their legal proceedings and recovery from trauma.
3. Inclusive Interpretation of Law: Article 285 must be interpreted in an inclusive manner by recognizing the victim's helplessness as a form of violence or coercion that meets the elements of the crime of rape.

CONCLUSION AND SUGGESTION

Conclusion

The conclusion of the study "Legal Protection of Rape Victims with Mental Retardation as a Helpless State" is that rape victims with mental retardation should be considered in a state of helplessness, which requires special legal protection. This study found that the legal system in Indonesia has not fully accommodated the needs of victims with this condition, so they often do not get proper justice. Therefore, there is a need to strengthen regulations and law enforcement that are more sensitive to this special situation, including training for law enforcement officials to better understand the condition of victims with mental retardation. In addition, it is important to provide adequate assistance and support to victims during the legal process, in order to ensure that their rights are optimally protected and fulfilled.

Suggestion

In line with the conclusions that have been put forward above, as an answer to the existing problems, suggestions are submitted as recommendations, as follows:

1. The Government and the House of Representatives of the Republic of Indonesia to amend Marriage Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law which better realizes the value of gender justice, especially regarding the requirements for marriage lawsuits.
2. Law enforcement institutions should improve their legal knowledge and skills in the field of IT Human Resources to better understand the reasons for filing for divorce due to domestic violence.
3. Legal culture is the creation of a social behavior in the legal community related to the noble values of Pancasila which has been proven to unite all components of Indonesia society so that social justice is created for all Indonesia people.

DAFTAR PUSTAKA

- C.S.T Kansil, Introduction to Indonesia Law and Governance, (Jakarta: Balai Pustaka Publisher, 1989), p. 40
- Dinie Ratri Desiningrum. Psychology of Children with Special Needs, (Yogyakarta: Psychosain, 2016) p. 16
- Eko Riyadi. Human Rights Law: International, Regional, and National Perspectives, (Depok: Rajawali Pers, 2018) p. 258.
- Nunung Aprianto, The Intricacies of the Visually Impaired and Their Learning Strategies. (Yogyakarta: Javalitera, 2012), p. 28.
- Philipus M. Hadjon, Protection for the People in Indonesia, (Surabaya: PT. Bina Ilmu, 1987), pp. 1-2.
- R. Transportation of Persons (Study on the legal protection of passenger luggage at PO. Rosalia Indah). 2009. PhD thesis. University of Muhammadiyah Surakarta.
- Satjipto Rahardjo. Law, (Bandung: PT. Citra Aditya Bakti, 2000), p.54.
- Setiono, Rule Of Law (Legal Supremacy), Master of Law Postgraduate Program, Surakarta : Universitas Sebelas March, 2004) p. 3.
- Suharsil. Legal protection for children and women. (Depok: PT. Rajagrafindo Persada, 2016). p. 97.
- Satjipto Raharjo, 2000, Ilmu Hukum , Bandung , PT. Citra Aditya Bakti, hlm 54 7

Pjillipus M. Hadjon, 1987, *Perlindungan Hukum bagi Rakyat Indonesia*, Surabaya, PT. Bina Ilmu, hlm 2.
Endang Rochyadi, 2005, *Pengembangan Program Pembelajaran Individual Bagi Anak Tunagrahita*, Jakarta: Depdiknas, hlm 11