

LEGAL PROTECTION OF WOMEN AND CHILDREN FROM VIOLENCE IN THE PERSPECTIVE OF REGIONAL REGULATION OF BULELENG REGENCY NUMBER 5 YEAR 2019

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Abstract. In the context of preventing and overcoming violence against women and children in Buleleng Regency, it is necessary to protect women and children victims of violence in the form of Regional regulations. The protection of women and children victims of violence in the regions requires institutional support and regulations that can guarantee its implementation. Regional regulations regulate protection efforts for victims, especially in terms of prevention, service, and empowerment of women and children victims of violence in Buleleng Regency.

Keywords: legal protection, women and children, acts of violence.

I. INTRODUCTION

Indonesia is a state based on law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. As a rule of law, human rights are the main element that must be protected, enforced and fulfilled by the state (Perwira, 2003). The term human rights for women and children appears along with the awareness of the need for special attention and special protection for women and children, in addition to the concept of human rights in general because of the many problems and problems experienced by women and children such as physical and psychological violence, discrimination in various fields of life. , poverty, underdevelopment in various fields and others so that in several studies and arrangements, women are included in a vulnerable group, together with children, minority groups and other vulnerable groups (Perwira, 2003).

The concept of Human Rights includes three main elements for human existence as both an individual and a social being, namely human integrity, freedom and equality. The three elements are conceptualized into definitions and understandings of what human rights are (Eide, et. al, 1995). The understanding of this definition becomes clear when recognition of these rights is given and is seen as a humanization process by other parties in a vertical (individual to state) and horizontal (between individuals) context, both de facto and de jure. Thus, human rights values are fundamental and universal with the recognition, protection and promotion of human integrity, freedom and equality in the main international human rights instruments, at the international, regional and national levels. Although the values are universal, human rights can be divided into several normative academic groupings, namely, first, personal rights or "personal rights". Second, economic rights or the right to own something ("property rights"). Third, the right to get equal and equal treatment in law and government or the "right of legal equality". Fourth, political rights or "political rights". Fifth, social and cultural rights or "social and cultural rights", such as obtaining and choosing education, develop a preferred culture. Sixth, the right to litigate and protect it or "procedural rights". The meaning and understanding of human rights in terms of substance becomes complex and complex based on developments, existing realities and the complexity of other determinants (Wantu, 2020).

Human rights concepts and values change over time through both evolutionary and revolutionary processes from normative forces into processes of social and political change in

the entire order of human life (Stubbs, 2002). Thus, the understanding and understanding of the meaning of human rights in terms of substance must be returned to the basic concept of why human rights exist. Human rights exist and arise because these human rights are very basic in nature in the sense that their implementation is absolutely necessary so that humans can develop according to their talents, aspirations, and dignity as human beings regardless of differences that cause discrimination based on nation, race, religion and gender. The principles of understanding human rights must be the main foundation so that the substantive understanding and understanding of human rights is applicable. These principles are the application of the concept of indivisibility and the interdependence of human rights values themselves.

II. LITERATURE REVIEW

Legal protection consists of 2 (two) basic words, namely "protection" and "law". Black's Law Dictionary uses the word "protection" for protection and defines it as "the act of protecting", which means action in order to provide protection. Meanwhile, according to the Big Indonesian Dictionary Online, protection contains 2 (two) meanings, namely shelter and protection (Fakhri, R. (2017). Thus, shelter concerns the place where the subjects receive protection, whereas protecting matters involves actions to provide protection. From these two basic definitions, it can be understood that protection includes the elements of the subject who performs the act of protection, the object of protection and the place where the subject receives protection (Wismayanti, Y. F, 2019).

The definition of "legal" for law is based on various sources of law, the law does not have a uniform and standard formula that can satisfy all parties (Alfitri, A. (2020). The positivist view represented by Austin Hart and Kelsen for example, they view law as rules made by the authorities. Positivists also argue that law is both a commandment and a sanction, as Austin argues. Positivists do not consider morals as the main part of law, on the contrary, morals should not have a place in the nature of the law wherever possible. Kelsen is a positivist jurist who argues this (Rumble, L., et. al., 2020).

Legal protection is one of the most important elements of a rule of law, because in the formation of a country, laws will be established to regulate each citizen (Colbran, N. (2010). Legal protection is the beginning of the birth of a legal relationship, namely the interaction between legal subjects that have legal relevance or have legal consequences, so that it will give birth to a right and obligation to one another (Ariani, N. M. I., et. al, 2020). Legal protection is interpreted as an effort made consciously by every person and government, private sector with the aim of securing, controlling and fulfilling the welfare of life in accordance with existing human rights. This meaning cannot be separated from the function of the law itself, namely to protect the interests of legal subjects (Grijns, M., & Horii, H, 2018).

Legal protection will be the right of every citizen, but on the other hand, it can also be felt that legal protection is an obligation for the state itself, therefore the state is obliged to provide legal protection to its citizens (Vidianditha, K. R., 2020). In addition, it is based on Article 28 of the 1945 Constitution of the Republic of Indonesia, and its amendments (Mangku, 2020). Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that "Every person has the right to protection of himself, family, honor, dignity and property under his control, as well as the right to sense of security and protection from the threat of fear for do or not do something which is a basic right " (Munir, L. Z.2005).

Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that "Every person has the right to receive special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice". The principle of legal protection against government actions rests on and originates from the concept of protection of human rights, the birth of protection of human rights is directed at limiting and placing the obligations of society and the government. Legal protection is a separate description of the function of the law itself, which has the concept that law provides justice, order, certainty, benefit and peace to its citizens (Afrianty, D.2018).

There are two (2) types of legal protection, namely preventive legal protection and repressive legal protection. Preventive legal protection is protection provided by the government with the aim of preventing before a violation occurs. This is contained in statutory regulations with the intention of preventing a violation and providing signs or limitations in carrying out an obligation. Meanwhile, repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given when a dispute has occurred or an offense has been committed (Boothby, N., & Stark, L. 2011).

III. RESEARCH METHODS

Research is a scientific activity related to analysis and construction, which is carried out methodologically, systematically and consistently. Methodological means according to a certain method or way, systematic means that it is based on a system and is consistent, which means that there are no contradictions within a certain framework, thus research is carried out through analysis and construction of existing data. Research is an effort to explore an object that is unclear, obscure, or even without explanation for it. A logical and systematic study of the principles that guide scientific research (methodology) is intended as a basic principle and not as a method (method or design for conducting research) (Soekanto, 2012).

According to Kerlinger's opinion, it emphasizes 2 (two) important things about scientific research, namely: first, scientific research is systematic and controlled, meaning that scientific research is organized in a certain way so that the investigation can have critical beliefs about the results of research and second, scientific research is empirical in nature, meaning that it is to obtain valid research results must use a certain way to test their beliefs with something outside the researcher (Sumardjono, 1997)

Every scientific research that is carried out is closely related to the disciplines under study and because law is a branch of scientific knowledge, in carrying out legal research it is closely related to the basic principles of scientific research. According to Soerjono Soekanto, legal research is a scientific activity based on methods, systematic and certain thoughts that aim to study one or several certain legal symptoms, by analyzing them, including conducting an in-depth examination of the legal facts to then seek a solution to the problem. arising in the symptom concerned.

Based on its nature, legal research is divided into 3 (three) types, namely exploratory, descriptive and explanative research. Exploratory research is research that is intended to test certain hypotheses, what is meant by descriptive research is research that is intended to provide

as accurate a data as possible about humans, conditions or other symptoms, the intention is mainly to reinforce hypotheses in order to help in strengthening old theories or within the framework of developing new theories, whereas explanative research is research conducted when there is little or no knowledge of a symptom to be investigated (Kerlinger, 2004).

Furthermore, from the point of view, there are diagnostic, prescriptive and evaluative types of research. Diagnostic research is an investigation that is intended to obtain information about the causes of the occurrence of a symptom or several symptoms, then prescriptive research is research aimed at obtaining suggestions about what to do to overcome certain problems, while evaluative research in general done when someone wants to assess the programs being implemented.

Judging from the objectives of legal research itself, there are types of normative research (literature) and empirical research (field). Normative research (literature) is legal research conducted by examining library materials or secondary data alone, while empirical (field) research is legal research conducted primarily by examining primary data.

Based on the division of these types of research, based on the nature of this research is descriptive research, namely research that intends to provide as accurate a data as possible regarding the Legal Protection of Women and Children from Violence in the Perspective of Buleleng Regency Regional Regulation Number 5 of 2019. Based on the form, This research is evaluative and prescriptive research, evaluative research because this research intends to provide an in-depth analysis of legal protection for women and children, while prescriptive research because this research will also provide the right solutions based on the principles of national law and those that apply to overcoming obstacles. Obstacles in providing legal protection for women and children from violence, and the purpose of this legal research is normative legal research and literature.

IV. RESULT AND DISCUSSION

The state as a legal person must be able to fulfill and protect the human rights of its people in every legal relationship that occurs between individuals, individuals and groups, or groups with groups in society. The state, which is represented by the Government and other state institutions, such as the Legislative and Judicial powers, must actively prove that the power and authority entrusted by the people to the state is solely used to ensure that people's rights are fulfilled or not abused. For example, the Executive and Legislative powers make, implement and supervise the application of laws regulating the fulfillment of the right of everyone to be free from persecution and violence, especially for all legal subjects who are relatively vulnerable to violence, such as women, witnesses and victims of crime. . Meanwhile, the Judicial power is primarily responsible for adjudicating every legal subject who commits an act against the law, based on the law (Wahyuningsih, S. E).

The state and each individual have their own role in the implementation of human rights. The role of individuals is related to the principle of balance as stated above, namely that human rights do not only contain authority or freedom but also individual responsibilities or obligations, and every individual as a human rights subject has an obligation or responsibility to respect the human rights of others, as well as other people being demanded. to respect his human rights. Violation of one's human rights by another individual is an act that can be held accountable legally (Purwanti, A.2017).

However, the role of the state is very central and important in the implementation of human rights. Referring to various human rights instruments, it is a state that has the obligation to ensure the fulfillment of human rights (Sulistiyono, T., 2019). The state has an obligation to ensure that human rights are respected, protected, promoted and fulfilled. Respect (to respect), protect (to protect), promote (to promote) and fulfill (to fulfill) shows the level of action or actions that must be taken by the state in relation to the implementation of human rights. Respect is the government's most "minimal" action (in the form of negative action, meaning not to commit violations), and fulfilling is the state's obligation to take the most "full" effort for the realization of human rights (Nur Hayati, E., 2013).

The nature of state obligations mandated in international human rights instruments with regard to the implementation of human rights differs between civil and political rights, and economic, social and cultural rights (Nur Hayati, E., 2013). For civil and political rights, the ICCPR obliges the state to "immediately" take the necessary steps in the field of legislation or other steps in order to respect and ensure the implementation of these civil and political rights. As for economic, social and cultural rights, the ICESCR obliges the state to take steps, taking into account the maximum resources it has, in order to progressively realize these economic, social and cultural rights (Sutinah, S., & Kinuthia, K. M. (2019).

This is understandable because the realization of civil and political rights does not require large economic resources as in economic, social and cultural rights (Hardiyanti, M., & Purwanti, A). However, this does not mean that the state is only obliged to take measures in order to realize these economic, social and cultural rights when the state has reached a certain level of economic growth. Regardless of the capacity of the economic resources or other resources, a country should move as soon as possible towards the realization of these rights. In addition, there are several rights guaranteed in the ICESCR which do not require large economic resources. The state, for example, can immediately reform laws that are discriminatory in nature, or that cause people to be prevented from enjoying their rights, or laws and regulations that "facilitate" violations of rights by the state. Measures like these don't have to wait for the country to truly prosper (Prameswari, Z. W. A. W., & Agustin, E. (2018).

Legal protection for children and women in Buleleng Regency is regulated in District Regulation Number 5 of 2019 concerning Protection of Women and Children from Violence. Article 2 explains that the protection of women and children from acts of violence is carried out based on the principle: respect and fulfillment of the rights of victims of violence; gender justice and equality; non-discrimination; best interests of victims of violence; and legal certainty. Pasal 3 explains about the Protection of Women and Children from Violence with the aim of: preventing all forms of violence against women and children; protect women and provide services to women and children victims of violence; and empowerment of women and children victims of violence.

Article 4 explains that Every Woman and Child Victim of Violence has the right: to have respect for human dignity; to get protection from family, community, regional government and / or other parties either temporarily or based on the stipulation of protection orders from the court; for restoring physical, psychological and sexual health according to the suffering experienced by victims of violence; for handling specifically related to the confidentiality of the Victim; for assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations; for spiritual guidance services; and for settlement through mediation, if it is the best settlement in the interests of the victim; and make up his own mind.

Article 7 explains that the protection of child victims of violence is carried out by: formulating policies for prevention, reduction of vulnerable risks, handling of victims and data and information systems for children; carry out the maintenance, care and social rehabilitation of abandoned children, both inside and outside the institution; provide shelter, care and care for abandoned children; and provide special protection for children.

Prevention of Violence is regulated in Article 8 where Regional Governments take steps to prevent acts of violence against women and children by: disseminating statutory regulations; provide counseling / guidance; provide education on the dangers of violence in household; conduct seminars / workshops or the like; forming networks in efforts to prevent violence; coordinating, integrating, synchronizing violence prevention based on a partnership pattern; establishing a violence prevention system, mapping locations or areas prone to violence, and increasing public awareness in behaving in accordance with religious norms.

V. CONCLUSION

The purpose of the formation of the State is stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia which states that "The State protects the entire Indonesian nation and all the blood of Indonesia and to promote public welfare, educate the nation's life and participate in implementing world order based on independence, lasting peace and social justice". The definition of protecting here includes protecting every citizen, including from all forms of violence. In addition, Article 28 G paragraph 2 of the 1945 Constitution states that everyone has the right to be free from torture or treatment that degrading human dignity. Thus the right to get protection from violence is guaranteed by the constitution. Violence against women and children is a violation of human rights. Their dignity and dignity must be protected by women and children victims of violence and guaranteed their right to live in accordance with their nature without discrimination. In the context of preventing and overcoming violence against women and children in Buleleng Regency, it is necessary to protect women and children victims of violence in the form of Regional regulations. The protection of women and children victims of violence in the regions requires institutional support and regulations that can guarantee its implementation. Regional regulations regulate protection efforts for victims, especially in terms of prevention, service, and empowerment of women and children victims of violence in Buleleng Regency.

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