

Advocacy of Legal Aid Organizations: A Challenge in Handling Sexual Violence Case against Girls

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Abstract: The Legal Aid Organization (OBH) of the community is an important group in the Child Protection System in Indonesia. Law No. 16 of 2011 concerning Legal Aid regulated OBH. This research is entitled "Model of Community Advocacy on Sexual Violence cases in Medan City". The purpose of this study was to determine the role of OBH in the protection of children, especially girls who were victims of sexual violence. The study used literature and field research in Medan. Literatures were reviewed to get information related to OBH and institutions that work for child victims of sexual violence. Furthermore, there were 11 informants who involved in the in-depth interview and focus group discussion (FGD). They were from 5 OBH in Medan and were verified by Department of justice and human rights (*Kementerian Hukum dan Hak Asasi Manusia/Kemenkumham*). The results of the research are (a) OBHs find challenges in advocating sexual violence cases against children, (b) The model of advocacy which is more effective than others is prevention program such as community counseling in order to prevent sexual violence against children (c) lack of number of OBH in Medan which actively providing legal assistance on sexual violence cases.

1 INTRODUCTION

Glen Mower mentioned that 50 million children work in unsafe and unhealthy situations (Mower, 1997). 120 million children aged 6-11 years dropped out of school. 155 million children under the age of 5 years live in poverty and millions of children in the world including in developed countries experience neglect and neglect, sexual exploitation and victims of drug abuse (Mower, 1997). The bad situation that occurs in children continues to occur, based on UNICEF data in 2015, in developing countries there are 39 percent of children who live in poor poverty (Poverty, C. 2015). However, these data As many as 569 million children live with an income of US \$ 1.25 a day (UNICEF, 2015). Similar data provided by Save the Children, 570 million children in the world live in poverty, 400 million of whom are 12-year-old children in developing countries (UNICEF, 2015).

Bad situations that occur in children in the world include children in Indonesia. In Indonesia based on available data in 2011, there have been around 2,509 cases of violence against children, 59% were sexual violence cases. This violence is a gender violence

which involves girls as victims (Fernández & Alexis, 2014).

In 2012, KPAI recorded reports of 2,637 cases of violence against children and 62% of them were cases of sexual violence (UNICEF, 2015). From year to year, number of sexual violence against children is increasing. Actually, data which were available is not a fixed data. The whole data based are partial data which collected by an institution. UNICEF mentioned in its research report that there is not reliable prevalence data regarding to sexual violence cases in Indonesia (Rumble et.al, 2018). This situation made Indonesian government in limited situation to assess whether the issue of sexual violence in children is increasing or decreasing to make decisions for investment in policy and research (Rumble et.al, 2018).

Regardless of the situation and conditions in Indonesia which have not been accurate about the data on the prevalence of sexual violence in children that is not accurate, Indonesia today has a law that guarantees the protection of victims. Currently OBH is a term that is trend in the community group. However, it must be known that OBH is actually not known in Law No. 16 of 2011 concerning Legal Aid (UU Bantuan Hukum, 2011). Law concerning Legal

Aid only recognizes the terms "Legal Aid Institutions" and "Community Organizations". However, nowadays, the terminology of OBH is more popular rather than other terms in legal aid context. People who need legal assistant can take the form of a foundation, legal Aid Centre (*Pos Bantuan Hukum/Posbakum*), legal aid institution (*Lembaga Bantuan Hukum/LBH*), etc., In regard to the popular term, hereinafter referred to as OBH. Based on this situation, this paper will discuss about legal assistance carried out by OBH in Medan for children victims of sexual violence. This legal assistance can be in the form of legal consultation and assistance at the court level.

This research is intended to examine and answer the main problems regarding the advocacy model of OBH in providing protection for children victims of sexual violence. Furthermore, this main problem was developed into 2 research questions such as what is the model of community advocacy for girl victims of sexual violence in Medan? And what is the challenge for OBH in providing protection like the girls victims of sexual violence in Medan?

2 RESEARCH METHODOLOGY

This research was conducted using empirical normative research in order to figure out the implementation of Law No 35/2014 as an amended Law no 23/2002 concerning child protection and Law No. 16 of 2011 concerning Legal Aid (Irianto, 2013). The study analyzed the norms contained in the legislation and continued with proof empirically involving key informants so that the problems being discussed can be obtained. The location of the research was Medan as the capital of Sumatera Utara province. This research involved informants or resource persons in in-depth interviews and focused discussions of 11 staff from 5 Ministry of Law and Human Rights partners who provided legal assistance to the community in Medan City. The interview guide is used by researchers when conducting in-depth interviews and Focused Discussions.

3 RESULT AND DISCUSS

The amendment to Law No 23 year 2002 concerning child protection which now became Law No 35 year 2014 is a form of Indonesia's responsibilities and obligations in accordance with the mandate of the Convention on the Rights of the Child (CRC) article

4 which has been ratified by Indonesia through Presidential Decree No. 36 of 1990 (Rumble et.al, 2018). The steps taken by the Indonesian government by changing the UUPA are legislative steps. The government's obligation is not to be here in child protection, the UUPA mandates the role of the community in the implementation of child protection which is carried out by involving community organizations, academics, and child observers.

Thus, community organizations, academics and observers of children should go directly to the field to do prevention by doing a lot of education in terms of protection for children, so that cases of crime against children (especially sexual crimes) which recently haunt many can be minimized. Alberta Civil Liberties Research Centre, a research institute that focuses on issues of civil liberties and human rights in Canada, shares the concept of access to justice, one of which includes advocacy for those who cannot afford it. This concept holds that the aim of access to justice is to provide legal assistance to people who cannot afford legal services (*The Law Society of Canada*, 2014). In this case, the OBH plays a role in providing legal assistance to girls who are victims of sexual violence who seek justice for themselves. One way to access justice can be seen in the legal regulations concerning OBH through Law No. 16 of 2011 concerning Legal Aid.

Furthermore, the existence of OBH in the framework of the legal objectives itself uses the opinion of Gustav Radbruch. According to Gustav Radbruch there are three legal objectives known namely justice, legal certainty, and legal benefits which using by these three legal objectives. However, justice must occupy the first and foremost position of certainty and benefit. Of the three legal objectives, it cannot be carried out jointly because as is known, in reality there is often a conflict between legal certainty and legal benefit, or between justice and legal certainty, or between justice and expediency (Arifin, 1994).

Relating to this research, the girl of a victim of sexual crime must obtain justice in the form of a legal process of the perpetrator who committed the crime against him. Moreover, the girl of the victim of sexual crime gets legal certainty in the form of the conviction of the perpetrator of the crime in accordance with the laws and regulations. Finally, the law against girls victims of sexual crimes can be beneficial for themselves as victims and for perpetrators in the form of deterrent effects

According to the Annual Report on the Implementation of Law No. 16 of 2011 concerning legal assistance issued by the Ministry of Law and Human Rights, there are 593 OBH who registered into the verification process. From there were 310

OBHs who passed verification and accreditation in 2013. In reality, not all of the 310 OBHs had legal status; therefore BPHN gave them the time and opportunity to take care of the legal entity status. After the deadline given by BPHN there were 12 OBH who were unable to obtain legal status, so that the remaining 298 LBH were declared valid as OBH (Ibrani, 2015).

The study, entitled "Community Advocacy Models for Girls Victims of Sexual Violence in Medan City" discussed about OBH in Medan City. Data from the Regional Office of the Ministry of Law and Human Rights of Sumatera Utara province states that there are 17 accredited Legal Aid Organizations in the Sumatera Utara province 2016-2018 Period. However, only 11 accredited OBHs are in Medan City. The forms of OBH include foundations, legal aid bureau, legal aid institutions, CSOs and associations.

These OBHs are managed by individuals, groups and even universities. Although the form of OBH varies but the aim is the same, namely to provide legal assistance to anyone who needs it as mandated in Law No. 16 of 2011 concerning Legal Assistance, in Article 1 number 1 stating legal assistance is legal services provided by Legal Aid Providers free of charge to Legal Aid Recipients. In Medan there were only 6 OBHs in Medan whose focus of legal assistance was given to girls who were victims of sexual violence in Medan City who carried out legal advocacy namely litigation and non-litigation.

3.1 Model of Community Advocacy Girl Victims of Sexual Violence

The community represented by OBH provides legal assistance in litigation and non-litigation. Litigation is part of critical education which is the provision of legal assistance to the community in achieving justice. Non litigation is the provision of legal assistance in the form of counseling to the community so that the community gets an understanding of their rights which has been recognized by advocacy is often regarded as one of the strategic actions aimed at solving social problems.

Table 1: Type of Advocacy of OBH in Medan.

No	Name of OBH	Type of Advocacy
1	<i>Pusat Kajian dan Perlindungan Anak Medan (PKPA)</i>	Litigation and non litigation
2	<i>Yayasan Pusat Advokasi Anak Indonesia</i>	Litigation

	<i>(Yay. Pusaka)</i>	
3	<i>Yayasan Lembaga Bantuan Hukum Trisila Nusantara</i>	Litigation and non litigation
4	<i>Perkumpulan Lembaga Bantuan Hukum Menara Keadilan</i>	Litigation and non litigation
5	<i>Biro Bantuan Hukum Universitas Muhammadiyah Sumatera Utara</i>	Litigation
6	<i>Lembaga Bantuan Hukum APIK Medan</i>	Litigation and non litigation

In the case of assistance, starting from the time the child reports until the child enters the trial stage, he must be accompanied by the Indonesian Child Protection Commission (*Komisi Perlindungan Anak Indonesia/KPAI*) along with the Legal Aid Institute, both from the perpetrator and the victim can be accompanied, to the supervision of the court process. The victim was accompanied by a verdict while the victim was accompanied so that the victim's family would not be harmed as experienced by one of the OBH who became the informant. (Interview on 4 October 2016).

Not only, LBH who advocate for children victims of sexual violence but also there is also a Correctional Centre (*Balai Pemasyarakatan/BAPAS*). BAPAS is an institution that conducts community research under the Ministry of Law and Human Rights. BAPAS conducts advocacy, when girls enter the legal process, for example, when investigating the police. BAPAS will conduct monitoring to ensure that the treatment obtained by children as victims of sexual violence will not be the same as adult victims. BAPAS ensures that there must be good communication with the victim's parents so that we know the needs of the victim so as to achieve good advocacy for the child victims of sexual violence. So the model of advocacy must be supported by the parents of the victims of sexual violence.

The results of interviews with other informants stated that the advocacy model was litigation and non-litigation.

"... The advocacy carried out by our institution is for example paralegal education, this is done specifically for groups of community groups, whose children are victims. Groups that have the same problem, whose children are victims, they are given related training to be a companion in the community, because they have personal experience so that they can socialize to the community, but must be trained first. Moreover, this training is aimed at people whose

areas are vulnerable to cases of sexual violence ... "(in-depth interview on 13 October 2016).

It was further stated that advocacy was also carried out in the form of litigation;

"... in litigation, namely assistance to the Court, namely from the process of the victim asking for help to PKPA, the process starts from mentoring in the community, investigating the police, investigating the prosecutor's office until the court process. When PKPA advocates for girls who are victims of sexual violence, the victim must get good legal services until the case can be resolved properly so that the victims get justice and legal certainty, examples of non-litigation advocacy such as advocacy for the government, how the government can produce more policy regulations both in handling cases against children, such as disseminating, campaigning to stop child sexual violence in the community ... "(in-depth interview on 13 October 2016).

At the end of the study it was found that there were three models of advocacy for OBH for girls victims of sexual violence in Medan, namely: juridical or legal protection, psychologically, and medically. The explanation for these models was obtained from participants when conducting FGDs. The legal advocacy model is to provide assistance - assistance or emphasize to Investigators, Prosecutors and Courts to immediately process the perpetrators legally. After that, escort the process to run according to the laws and regulations.

The model of psychological advocacy is to help girls who are victims of sexual violence by inviting them to talk and chat and establish communication with the parents of the victims, but it is endeavored that the child does not remember the events that happened to her.

The model of medical advocacy is to help girls who are victims of sexual violence in the form of mentoring to clinics or hospitals to get treatment, if there is physical violence they experience

3.2 Challenges for OBH in Advocating Sexual Violations Cases

Some informants stated that the problem of OBH in carrying out advocacy for girls victims of sexual violence was law enforcement officers (APH) such as the police.

"..Law enforcers, namely the police when receiving reports of sexual crimes, there are still many who think to resolve the case by marrying the victim to the perpetrator. Not only the police but at the time of the judge's trial in handling cases that contain..."(FGD, 16 October 2016)

The research findings that show that marrying victims with perpetrators is another form of child sexual violence. This is based on the fact that marriages that hold by girls, victims of sexual violence, will not only affect on not fulfilling her rights as children, right of education for instant. Moreover, she will drop out of school and trap in household which place her in a risky situation of being victim of domestic violence (Rosmalinda & Sirait, 2018).

Not only is the mindset of the police officers who "make it easier" to resolve cases of sexual violence, but their attitude is not in favor of the victims.

"... an element of sexual violence when asked about his opinion on the case ... often expressing opinions and questions that are not in favor of the victim's daughter ..." (FGD, 16 October 2016)

The statement of informants in this FGD strengthened the revelation of other informants when an in-depth interview was conducted:

"... Law enforcement officers, namely the police in the case of investigations in the verbal process, such as the police statement, sometimes are actually not statements that help the psychological recovery of victims who are children but instead break. Victims are still often blamed and not given what kind of protection they need ... "(in-depth interview, 27 September 2016)

The challenges that were found were not only found by OBH from APH but also from the applicants for assistance

"... In this case there are legal aid applicants who live in remote areas and have not received socialization of legal assistance, so that the applicant did not bring SKTM when he came to OBH" (FGD, 16 October 2016)

After conducting in-depth interviews and FGDs, this study obtained the things that were a challenge in the implementation of advocacy carried out by OBH namely; (a) Regulations concerning child protection are good but at the level of implementation they are still weak, one of the weaknesses is OBH in terms of handling to protect victims in terms of reducing the psychological burden of victims not found a suitable place as safe house or in other words facilities that are less supportive. (b) Law enforcement officials as legal structures that have effectiveness and knowledge about child protection are also very limited. (c) Lack of evidence, in the case of special advocacy for female child victims is a lack of evidence, so the case often stops in the middle of the

road. (d) There are requirements that must be met in obtaining legal assistance for the child who is still a child of sexual violence, namely a Certificate of Not Able to cause a long handling procedure because of the difficulty in administering this matter causing delays in the mentoring process. (e) The location of the client's residence that is far from the OBH office.

4 CONCLUSIONS

This study concludes that OBH who deal with girls who are victims of sexual violence in Medan City are still few. There are only 6 (five) OBH which using three patterns of advocacy for OBH for girls victims of sexual violence in the city of Medan, namely: protection, psychologically, and medically. Furthermore, advocacy patterns that are perceived as effective, namely non-litigation in the form of counseling to the public for prevention of violence sexual behavior for children and the cultivation of knowledge about reproductive health and healthy internet for children. As recommendation, it is expected that in 2018, the number of OBH verified by *Kemenkumham* will be at least 1 OBH in 1 district so that children in cases of sexual violence can be protected.

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