

INCEST IN THE DIMENSION OF SEXUAL VIOLENCE AGAINST CHILDREN

Gusti Ayu Kade Komalasari
Anak Agung Sagung Poetri Paraniti

ABSTRACT

Incest is sexual intercourse carried out by people who have blood ties or family ties. Incest can be done by family members such as father, mother, uncle, sister, grandfather and others to the child. The statistics of incest case do not show the actual facts of the number of incest cases that occur in the community. It is because the victims do not report. Therefore, incest becomes a hidden crime that is very likely to be committed many times. This research will discuss incest in the dimension of violence and its impact on victims and legal protection for them. Incest is sexual violence that occurs in a domestic environment (domestic violence). Victims of incest will experience psychological and physical disorder, and even pregnancy. Legal protection for victims is done by the law enforcement against the perpetrators and fulfillment of the rights of the victim.

Keywords: Children, incest, legal protection, violence.

INTRODUCTION

Incest is an act that violates the law and norms in society. Incest refers to sexual activity between parties related by blood or some other familial relation.¹ These acts include familial abuse, which is sexual violence where the victim and the perpetrator are still in a blood relationship, becoming part of the nuclear family. This includes someone who is a substitute for parents, such as a stepfather, or lover, caregiver or someone who is trusted to take care of the children.² Children are a group who are victims of sexual violence committed in this family relationship. Incest can occur on the basis of feeling love each other, and can also occur because of the element of coercion. In the context of children, then of course there is no such thing as mutual love. Sexual relation with children is a crime.

The National Commission on Violence Against Women in 2018 reported that for sexual violence in the private / personal area this year, incest (the offender still had family relations) was the most reported case of 1,210 cases, the second was 619 rape cases, then sexual intercourse / sexual exploitation of 555 cases. From the total 1,210 incest cases, 266 cases (22%) were reported to the police, and entered into the court process as many as 160 cases (13.2%). The highest perpetrators of sexual violence in the private / personal area were boyfriends of 1,528 people, followed by biological father as many as 425 people, then the third ranked was uncles as many as 322 people. The number of biological father and uncle as the perpetrators is in line with the increasing cases of incest.³

In 2019, the National Commission on Violence Against Women reported incest cases of 1,071 cases of complex violence, in addition to the perpetrators of those who should protect (fathers, uncles, brothers and others), the cases were often hidden or revealed very slowly, often were not processed legally. It was also covered to protect the family's reputation. This condition can be seen from the data processed by the District Court in which there were only 119 cases, and did not appear in the data of the Religious Courts as the cause of divorce. Incest is a form of sexual violence that is difficult to be reported by the victims. It is difficult because it involves family relationships and usually if the victim is a girl, the victim's mother has difficulty because the offender is her husband. When viewed in which the highest incest perpetrators are fathers and uncles, it can be imagined how difficult it is for the victims to report their cases because maintaining the reputation of the family is still a culture in Indonesia.⁴

The incest case illustrates the massive sexual violence against children. The case can be seen in Decision Case Number 659 / Pid.Sus / 2016 / PN, in which a father requested the care for his daughters (9 and 15 years) on the pretext of being taken care of by the perpetrator (the victim's parents had been divorced). The victim was made as sex slave by her own biological father. The perpetrator had committed violence or threats of violence, forced, deceived, carried out a series of lies, or persuaded the victims to commit or allow obscene acts to be carried out against the perpetrators. He forced them to have sexual intercourse with himself and others to get paid. If they refused, he would not give them food. Denpasar District Court sentenced the prisoner to prison for 17 years and a penalty of Rp.1,000,000,000 (1 billion) provided that if the fine was not paid, then it would be replaced with a 6-month imprisonment.

¹ Michael Salter. (2016). The privatisation of incest: The neglect of familial sexual abuse in Australian public inquiries *The sexual abuse of children: Recognition and redress*. Accessed from https://www.researchgate.net/profile/Michael_Salter7/publication/294787404_The_privatisation_of_incest_The_neglect_of_familial_sexual_abuse_in_Australian_public_inquiries/links/56c4069408aee3dcd416850d.pdf, 108.

² Ivo Noviana. (2015). Kekerasan seksual terhadap anak: dampak dan penanganannya. *Sosio Informa* 1(1), Accessed from <https://ejournal.kemosos.go.id/index.php/Sosioinforma/article/viewFile/87/55>, 16.

³ See: Lembar Fakta dan Poin Kunci

Catatan Tahunan (CATAHU) Komnas Perempuan Tahun 2018 Tergerusnya Ruang Aman Perempuan dalam Pusaran Politik Populisme Jakarta. (2018).

⁴ Komnas Perempuan. (2018.) Korban Bersuara, Data Bicara Sahkan RUU Penghapusan Kekerasan Seksual Sebagai Wujud Komitmen Negara. Catatan Kekerasan Terhadap Perempuan Tahun 2018. Jakarta, 6 Maret 2019

The incest case is considered taboo in every culture around the world. The perpetrators and victims rarely want to reveal and report the events that occur because of the and disgrace that befell their own families. Cases of incest are often hidden by the victim, the perpetrator, and witnesses who are family and close people. According to Bagong Suyanto, it is explained that children who become incestors are the most difficult to recover. They are likely to suffer acute trauma. The future will be destroyed and for those who cannot bear the burden, then the only choice will be suicide. Disgrace, the feeling of being polluted and the events that will continue to haunt the victim, so they often choose to take shortcuts to do and end all their suffering.⁵

Incest is a domestic case, namely sexual relations that occur between family members or with someone who is considered a family, which is done by men or women and the victims are men or women. The reasons for the victims / family did not report this crime are because they are afraid of the threat of the perpetrators and embarrassed if others know about this case because they considered it as a family disgrace that cannot be disclosed. As incest victims, psychologically and socially, women experience very complex problems, and require attention from all parties and legal protection. Efforts to tackle the outbreak of violence need to be done immediately so that victims do not increase in number.⁶

LEGAL MATERIALS AND METHODS

This research is a normative juridical study which examines incest as a dimension of violence against children. The study in this research uses a regulatory, legal concept, and case approach. Legal material consists of primary and secondary legal material. The primary legal material is in the form of laws and regulations namely the Law on Child Protection and the Law on the Elimination of Domestic Violence. Secondary legal material is in the form of literature that is relevant to this research. The problem analysis is done qualitatively.

RESULT AND DISCUSSION

Incest against Children in the Dimension of Violence and Its Impacts

Etymologically, incest is derived from the word *incestum*, meaning no, *castus* means holy, clean. Incest means blood staining because it does not impure coitus. In epistemology, the definition of incest is sexual relations between men and women inside or outside the bond of marriage, which they are involved in a close kinship or lineage relationship.⁷

Sexual violence against children can occur at any time, anywhere and is carried out by anyone, including those who are considered as protectors such as biological father / stepfather, mother, uncle, aunt, grandfather or siblings. The victims are not only girls, but also boys, although in the revealed cases, the victims are generally girls.

Family are the most important primary group in society. The family is a group formed from a relationship of men and women, a relationship that long lasts to create and raise children. Therefore, the family in its pure form is a social unit consisting of husband, wife, and children who are not yet mature.⁸ The family is the first and main social group for someone, but there are times when the family becomes a perpetrator of violence. The house is supposed to be a safe shelter for children, but the fact is that the house actually becomes a place of sexual violence against children committed by family members themselves. Children become the object of crime because in physical terms, they are not strong enough to resist. The immature psychological condition also makes them easily to be influenced and they are also helpless against a threat. Cases of incest affecting girls in the domestic environment are generally accompanied by violence or threats of violence.

Violence occurs when someone acts in an inappropriate manner and uses physical force that violates the law and injures oneself, another person or the environment. Violence is a consequence. It is a manifestation of a chaotic soul and heart that is disturbed. The shock of the soul and heart is so strong that it defeats common sense. In such an influence, the individual is really influenced by his lust and only focuses his thoughts on himself and the perpetrators do not care about the safety or welfare of others.⁹ Violence occurs when humans are affected in such a way that their actual physical and mental realization is below their potential realization.

The term violence is used to describe behavior, both overt or covert, and both offensive or defensive, accompanied by the use of force in others. In general, Eka Hendry divides violence into 3 categories based on large scale as follows :¹⁰

1. Domestic violence, which is violence that occurs within the scope of the nuclear family. The motive for violence is usually based on the personal character of family members, whether formed by the character (rough treatment) of a husband towards his wife, parents against children or host violence against servants, etc. and the influence of temporal factors, such as fatigue, stress due to work, economic situation and so on. The domestic violence may be a factor causing crime.

⁵Bagong Suyanto dan Emy Susanti. (2016). *Wanita Dari Subordinasi dan Marginalisasi Menuju ke Pemberdayaan*, Surabaya: Airlangga University Press, 10.

⁶Retnaningrum, D. H. (2009). Incest Sebagai Bentuk Manifestasi Kekerasan Terhadap Perempuan. *Jurnal Dinamika Hukum*, 9(1), 19-28, 21.

⁷Kartini Kartono. (2019). *Psikologi Abnormal dan Abnormalis Seksual*. Jakarta: Mandar Maju, 255.

⁸Abu Ahmadi. (2000) *Psikologi Sosial*, Jakarta: Rineka Cipta, 221.

⁹Abdurrahman Wahid. (1998). *Islam Tanpa Kekerasan*, Yogyakarta: LKS Yogyakarta, 142.

¹⁰Eka Hendry. 2003. *Monopoli Tafsir Kebenaran Wacana Keagamaan Kritis dan Kekerasan Kemanusiaan*, Jakarta: Persada Press, 105.

2. Criminal violence, namely violence committed by a person or group of people, with motives of interest are purely criminal. For example theft, rape and murder cases.
3. Mass violence, namely violence involving a wider community of people or groups, whose motives of interest are relatively greater in the form of an interest to bring about social change, both culturally and structurally.

Based on the opinion of Eka Hendry above, it can be drawn that violence is in various forms, ranging from small to large-scale forms. This violence can be carried out by various groups, both ordinary people and certain groups. Incest is domestic violence committed in a family environment. Violence that occurs in the family environment certainly makes the incest case is not easy to disclose. Martin R. Haskell and Levvis Yablonsky suggested that there are four categories which cover almost all violence, as follows:¹¹

1. Legal violence. This violence can be in the form of violence supported by law, for example soldiers carrying out tasks in warfare, as well as legally justified violence, for example certain actions to defend themselves.
2. Violence that is socially sanctioned. An important factor in analyzing violence is the level of social support or sanction against it. For example: a husband's acts of violence against an affair committed by his wife will get social support.
3. Rational violence. Some acts of violence that are not legal but do not have social sanctions are crimes that are considered rational in the context of crime. For example: murder in the context of an organized crime.
4. Irrational violence occurs without prior provocation, without regard to specific motivations and in general, the victim is unknown to the culprit.

Based on this statement, an act of violence is not only done by the community but also can be carried out by the state enforcement apparatus that is given the authority to do so. This is proven by the existence of legalized acts of violence because this violence is carried out for a good cause. The place of this violence even varies not only in vulnerable places but also in public places such as offices, hospitals, educational institutions, even to the extent that occurs within the scope of the household or family.

All forms of violence, whoever the perpetrators and the victims can be grouped in the big classification, namely as follows:

- a. Violence in the domestic area / intimate-personal relationships: various forms of violence in which the perpetrators and victims have family relations / other close relations. This includes abuse of wives, abuse of girlfriends, ex-wives, fiancées, biological children and stepchildren, mistreatment of parents, sexual assault or rape by family members.
- b. Violence in the public area: various forms of violence that occur outside of family relationships or other personal relationships.
- c. Violence committed by / within the State scope: physical, sexual and / or psychological violence that is committed, justified, or allowed to occur by the state.¹²

In the development of crime studies, violence does not only involve the realm of physical violence, but also extends to forms of non-physical violence. Forms of violence can also be classified into several types, as follows: Physical violence: beating, beatings, using of weapons to injure, torturing, using of drugs to hurt, physical destruction, murder, with all its manifestations; Sexual / reproductive violence: attacks or physical attempts to injure sexual / reproductive organs, or psychological attacks that demean or humiliate activities directed at the sexual appreciation of the subject. For example sexual manipulation of children's education, forced sexual relations / rape, sadism in sexual relations, mutilation of sexual devices, forced abortion, forced pregnancy, and other forms; Psychological violence: assault of self-esteem, destruction of motivation, humiliation, attempt to make strong terror in many of its manifestations. For example: curse harsh words, threats, stalking, insults and many forms of physical / sexual violence that have psychological impacts, (for example: nudity, rape); and Deprivation violence: neglect of basic needs in various forms, such as reduction, omission without food and drink, letting the sick continue.¹³

Incest is a form of sexual violence that also extends to physical and psychological violence. Perpetrators can abuse the victim so that they can have sexual relations with the victim. The persecution will be more severe if the victim refuses to have sex with the perpetrator. Physical violence can also be used as a means for perpetrators to prevent victims from reporting sexual violence that occurred to them. Psychic violence is carried out with threats, intimidation, bullying, and manipulation perpetrated by the perpetrator against the victim. The existence of perpetrators and victims in a house will aggravate the psychological suffering experienced by the victim.

Sexual relations between people who have blood relation occur because the perpetrators experience sexual deviations. Sawitri Supardi Sadarjoen classifies sexual behavior in several forms of deviation as follows:¹⁴

1. For the purpose of sexual objects
 - a. Pedophilia, consisting of homosexual pedophilia and heterosexual pedophilia.

¹¹Mulyana W. Kusuma. (1982). *Analisa Kriminologi Tentang Kejahatan-kejahatan Kekerasan*, Jakarta: Ghalia Indonesia, 25.

¹²E Kristi Poerwandari. (2000). *Kekerasan terhadap Perempuan: Tinjauan Psikologi Feministik*. Jakarta: Convention Wacht, 11.

¹³E. Kristi Poerwandari. (2004). *Mengungkap Selubung Kekerasan Telaah Filsafat Manusia*, Jakarta: Kepustakaan Eja Insani, 12.

¹⁴Sawitri Supardi Sadarjoen. (2005). *Bunga Rampai Kasus Gangguan Psikoseksual*, Bandung: Refika Aditama, 70.

- b. Incest
 - c. Hypersexuality
 - d. Limited opportunities and limited socio-economic abilities.
2. For the purpose of being a family breadwinner
 - a. Parents deliberately make their children as money seekers by forcing children to sell themselves, doing prostitution.
 - b. Pimp (manager of the practice of prostitution) is trying to find young girls to serve its customers.
 3. For the purpose of sexual avonturir

Girls and boys seek emotional warmth outside the home through excessive sexual behavior and are adventurous, both with peers and adult partners.

The cause of incest as a trigger is the influence of structural aspects, namely the situation in a complex society. The complexity of the situation causes helplessness in the individual. Especially if there is a man who tends to be considered more powerful it will be very shaken, and cause mental-psychological imbalance. Although incest can occur in all levels of the economy, specifically the condition of poverty is a chain of situations that has the potential to cause incest. Many poor families only have one house plot. The existing house is one or two rooms with multi functions. The child's bed and parents are often without limits. A father who is unable to restrain his lust is easily aroused to see his daughter asleep. This kind of situation allows for incest when the opportunity arises.

Incest as sexual violence that occurs in the home environment will make this case difficult to uncover. The victim is helpless and does not dare to report because the perpetrator has a superior position towards the victim. Families who are aware of this violence may also not report it because they are ashamed of revealing family disgrace, are afraid of cracks in the household, and are afraid of losing a breadwinner in the household, especially if the perpetrator is the only person who has income in the household. The existence of perpetrators and victims in the same place will provide a very large opportunity for perpetrators to commit sexual violence against victims. Confidentiality of incest makes incest unknown to the surrounding environment. As a result, this violence can occur many times in a long period of time. New cases can be revealed when pregnancy occurs to the victim.

Incest can be done with two patterns, the first is violence or the threat of violence against the victim so that the victim wants to have the sexual relations desired by the perpetrator. Perpetrators will also use violence and threats of violence so that victims do not disclose violence that has happened to victims. The second pattern is to manipulate the victim by providing an understanding that sexual relations are a representation of expressions of affection. The victim is also given the view that what is done by the victim is to meet the needs of the offender, so the victim cannot bear to not have sexual relations with the offender.

Incest occurs because of psychological problems of the perpetrator. First, father as the doer. The possibility of the offender having an unpleasant childhood, a family background that is less harmonious, maybe even the offender is a victim of sexual abuse in his childhood. Actors tend to have immature, passive personalities, and tend to depend on others. He is less able to control himself / his desires, less able to think realistically, tends to be passive-aggressive in expressing his emotions, lacks self-confidence. In addition, it is also possible that the offender is a user of alcohol or other illegal drugs in which it can damage his senses. Second, mothers as perpetrators. Mothers who commit sexual assault tend to have low intelligence and experience emotional disturbances. Mothers who incest against their sons tend to be driven by the desire for 'other men' figures in their lives, because the husband's physical or emotional presence is felt to be insufficient so that they hope their sons can fulfill desires that are not obtained from the husbands. This case is rarely found, women are more mature and women instinctively tend to have the nature of nurturing and 'protecting' children. Third, siblings as perpetrators. The victim's brother who commits sexual abuse usually mimics the behavior of his parents or has a desire to dominate and punish his sister. In addition, sexual abuse may also be carried out by adoptive / stepparent parents, or other people who live in the same house as the victim, for example foster siblings.¹⁵

The incestuous behavior is caused by the existence of aggressive behavior which is manifested in sexual violence. Aggressive people always look for weak figures as targets. As one form of sexual violence against children, incest causes a very large impact. Finkelhor and Browne categorize four types of effects of trauma due to sexual violence experienced by children:¹⁶

- a. Betrayal. Trust is the main basis for victims of sexual violence. As a child, having trust in parents and trust is understood. However, children's trust and parental authority are things that threaten the child.

¹⁵ Dewi Masyitoh. (2017). Perilaku Incest: Tindakan Kriminal Dan Penyimpangan Perilaku. *An-Nisa'* 10(1). Accessed from <http://ejournal.iain-jember.ac.id/index.php/annisa/article/view/640>. 36.

¹⁶ Ivo Noviana, *op.cit.*,20.

- b. Traumatic sexualization. Russel found that women who experience sexual violence tend to reject sexual relations, and consequently become victims of sexual violence in the household. Finkelhor notes that victims prefer same-sex partners because they think men cannot be trusted.

Powerlessness. Fear penetrates the victim's life. Nightmares, phobias, and anxiety experienced by victims are accompanied by pain. Feelings of helplessness cause the individual to feel weak. The victim feels she is unable and less effective at work. Some victims also felt pain in his body. Conversely, other victims have excessive intensity and encouragement in themselves.

3. Stigmatization. Victims of sexual violence feel guilty, ashamed, have a bad self-image. Guilt and shame are formed due to helplessness and feel that they do not have the power to control themselves. Children as victims often feel different from others, and some victims get angry at their bodies due to the abuse they experience. Other victims use drugs and alcohol to punish their bodies, blunt their senses, or try to avoid the memory of the incident.

Sexual violence in the case of incest is actually not new, incest cases that occur do not arise because it is considered as a family disgrace. Assistance in incest cases that occur in a family is not an easy thing to reveal, it is needed courage from various parties, especially families can see objectively that incest is violence, crime and injustice against victims.

Legal Protection of Children Victims of Incest

The formulation of the principles of legal protection in Indonesia is based on Pancasila as an ideology and state philosophy. The principle of legal protection in Indonesia is the principle of recognition and protection of human dignity and sources that originate from Pancasila. The principle of legal protection provided by the government rests and comes from the concept of recognition and protection of human rights, where the government has the legitimacy to regulate restrictions and laying down obligations of the community and government.

Legal protection can be interpreted as a protection given to legal subjects in the form of legal instruments both preventive and repressive, both written and unwritten. Legal protection concerns the protection of victims. Victim protection can be seen from two meanings:

- a. Can be interpreted as "legal protection not to become a victim of a crime", (meaning protection of human rights or legal interests of a person).
- b. Can be interpreted as "protection to obtain legal guarantees for the suffering of people who have become victims of criminal acts", (so synonymous with "sponsorship of victims"). The form of compensation can be in the form of restoration of good name (rehabilitation), restoration of equanimity (including forgiveness), compensation (restitution, compensation, social welfare guarantee), etc..¹⁷

According to Arief Gosita, it is an effort to protect children to be able to carry out their rights and obligations. Child protection law in law (written or unwritten) that guarantees that children can actually carry out their rights and obligations. Bismar Siregar states that the legal aspects of child protection, more focused on the rights governed by the law and not the obligation, reminded legally (juridical) children are not burdened with obligations.¹⁸ Shanty Dellyana believes that child protection is an effort to make oneself that protects children to exercise their children's rights and responsibilities.¹⁹ Children have a special position for children, so child protection is special protection before the law. This condition is inseparable from several principles which include:

- a. the principle of children cannot fight alone, children with all the limitations inherent in themselves have not been able to protect their own rights. Therefore, parents, society and the state must participate in protecting these rights;
- b. the principle of the best interests of the child, that the best interests of the child must be seen as a 'paramount importance' or the main priority;
- c. the principle of life cycle approach (life circle approach), an understanding must be formed that protection of children must begin early and continue;
- d. cross-sectoral principle, that the fate of children is very dependent on various macro and micro factors, both directly and indirectly.²⁰

The basis of the state in the protection of state children guarantees children's rights to survival, growth and development, as well as protection from violence and discrimination as stated in the 1945 Constitution of the Republic of Indonesia. Laws are created as a means or instrument to regulate rights and obligations. The law aims to ensure legal certainty in society and the law must also be based on justice, namely the principle of justice of the community.²¹ Protection provided to children who are victims of incest is through law enforcement against perpetrators. The legal basis used in law enforcement against incestors is as follows:

1. Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection.

¹⁷ Barda Nawawi Arief. (2007). *Masalah Penegakan Hukum Pidana Dalam Penanggulangan Kesehatan*, Jakarta: Kencana, 61.

¹⁸ Irma Setyowati. (1990). *Aspek Hukum Perlindungan Anak*, Jakarta: Bumi Aksara, 15.

¹⁹ Santy Dellyana. (2018). *Wanita dan Anak di Mata Hukum*, Jakarta: Liberty, 6.

²⁰ Muhammad Joni. (1999). *Aspek Hukum Perlindungan Anak Dalam Perspektif Konvensi Hak Anak*, Jakarta: Citra Aditya Bakti, 106.

²¹ C.S.T Kansil. (2019). *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta: Balai Pustaka, 41.

Sexual intercourse carried out against children is a special criminal act in criminal law; therefore, the rule used is the child protection law. The legal basis used is as follows:

Article 76D

Every person is prohibited from committing violence or threat of violence forcing the child to have intercourse with him or with others.

Criminal threats committed against incestors are regulated in Law of the Republic of Indonesia Number 17 Year 2016 concerning Establishment of Government Regulation in Lieu of Law Number 1 Year 2016 Regarding the Second Amendment to Law Number 23 Year 2002 concerning Child Protection into Law. The provisions of Article 81 are amended to:

1. Every person who violates the provisions referred to in Article 76D shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiah).
2. The criminal provisions referred to in paragraph (1) shall also apply to anyone who intentionally commits tricks, a series of lies, or entices the Child to have intercourse with him or with another person.
3. In the case of the criminal acts referred to in paragraph (1) committed by parents, guardians, people who have family relations, child caregivers, educators, educational personnel, officers who deal with child protection, or are carried out by more than one person jointly, the criminal is added 1/3 (one third) of the criminal threat as referred to in paragraph (1).
4. In addition to the offender referred to in paragraph (3), the addition of 1/3 (one third) of the criminal threat is also imposed on the offender who has been convicted of a criminal offense as referred to in Article 76D.
5. In the event that a criminal act as referred to in Article 76D results in more than 1 (one) victim, resulting in serious injury, mental illness, infectious disease, impaired or loss of reproductive function, and / or death victim, the offender is sentenced to death, as long as life, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.
6. In addition to being subjected to a criminal offense as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), an additional criminal offense may be imposed in the form of an announcement of the identity of the perpetrator.
7. Actors as referred to in paragraph (4) and paragraph (5) may be subject to actions in the form of chemical castration and installation of electronic detection devices.
8. The actions referred to in paragraph (7) shall be decided together with the main criminal code by including the time period for the implementation of the action.
9. Additional crimes and actions are excluded for child offenders.

Provisions in the Law of the Republic of Indonesia Number 17 Year 2016 are the implementation of legal protection given by the state to children. The state needs to take optimal and comprehensive steps by not only imposing criminal sanctions, but also implementing forms of prevention by providing chemical castration, installing electronic detection devices, and rehabilitation for perpetrators of sexual violence against children. To address the phenomenon of sexual violence against children, give a deterrent effect on perpetrators, and prevent sexual violence against children, the President has enacted Government Regulation in Lieu of Law Number 1 Year 2016 concerning Second Amendment to Law Number 23 Year 2002 concerning Child Protection May 25, 2016.

2. Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence

Incest is sexual intercourse carried out by people who have blood relations and in a family environment. Sexual relations carried out against children in a family environment by itself can be categorized as domestic violence, namely sexual violence. Article 8 of the Republic of Indonesia Law No. 23/2004 concerning the Elimination of Domestic Violence regulates the scope of sexual violence in the context of domestic violence as follows::

- a. coercion of sexual relations committed against a person living within the scope of the household;
- b. the imposition of sexual relations against one person within the scope of his household with another person for commercial purposes and / or certain purposes.

Criminal provisions against sexual violence committed within the scope of the household can be seen in the provisions of Article 46 and Article 47, which are as follows:

Article 46

Every person who commits an act of sexual violence as referred to in Article 8 letter a is sentenced to a maximum imprisonment of 12 (twelve) years or a maximum fine of Rp.36,000,000.00 (thirty-six million rupiah).

Article 47

Every person who forces a person who lives in his household to have sexual relations as referred to in Article 8 letter b shall be sentenced to a maximum of 4 (four) years imprisonment and a maximum of 15 (fifteen) years imprisonment or a fine of at least Rp. 12,000,000, 00 (twelve million rupiah) or a maximum fine of IDR 300,000,000.00 (three hundred million rupiah).

Article 48 regulates the imposition of criminal sanctions on victims if the victim experiences permanent disability, psychological disorders, miscarriage or loss of reproductive function. In full Article 48 states as follows:

In the case of acts as referred to in Article 46 and Article 47, the victim will receive a wound that does not give hope that he will recover at all, experience a mental or mental disturbance for at least 4 (four) weeks continuously or 1 (one) year not consecutively take part, death or death of the fetus in the womb, or result in malfunctioning of reproductive organs, shall be punished with imprisonment for a minimum of 5 (five) years and a maximum imprisonment of 20 (twenty) years or a fine of at least Rp.25,000,000.00 (twenty five million rupiah) and a maximum fine of Rp.500,000,000.00 (five hundred million rupiah).

In handling incest cases, the government together with NGOs provide legal protection in the form of assistance for victims to oversee the stages of the legal process. Victim protection is also carried out by meeting the needs of victims such as psychological recovery, referring victims to be examined by psychiatrists and psychologists to find out the psychological state of the victims to the agency designated for that. The government should also prepare a safe house for child victims, especially the perpetrators of incest cases are close relatives that allow perpetrators and victims to be in a house.

NGOs have a role in assisting victims, educating and advocating for victims' families. NGOs can provide the widest possible access for victims to obtain legal and justice protection, health services, and spiritual services. Assistance provided by NGOs can be done since the reporting or complaint, in the examination at the police level, trial in court, until after the court's decision. Psychological reinforcement of the victim is very much needed considering that the victim suffered the trauma of sexual violence from the closest person. It also did not rule out the possibility that victims received unfavorable treatment from the social environment. This condition will certainly worsen the condition of the victim. Therefore, education must be done thoroughly, both for victims, victims' families and their social environment.

Based on the results of research conducted on the incest cases in Bali, the family seeks a solution if the victim is pregnant. The extended family held a family meeting and agreed that the victim who was pregnant by his father was married to a distant relative to be able to live life with the status as the legal wife of his relative. The purpose is the children born can get the legal status from a legal marriage into a legitimate child (children of fathers and mothers). Perpetrators continue to carry out the punishment in accordance with their actions and lost custody. The patrilineal family system (*kapurusa*) adopted by Balinese Hindus causes only *kapurusa* status offspring who are considered to be able to take care and carry on the family's *swadharma* (responsibility).

The decision to marry the victim with relatives on the one hand aims to eliminate the negative stigma if a woman has children outside of marriage. In eastern culture, a woman who has children out of wedlock as taboo, is despicable and will be ostracized by society, as well as children born without fathers. On the other hand, this decision can actually create new problems, in which the married woman is a child. Children who are not ready to enter household life are actually forced to live domestic life. This condition makes the victim again as a victim. Men who are appointed to marry the victims also do not necessarily have the sincerity to marry them. This condition can cause domestic violence in the future.

The concepts of legal protection for victims of crime can be justified from the thoughts that developed in the science of Victimology which also studies the extent to which the implementation of regulations on victims' rights that have been implemented. Dominant factors that influence the existence of a criminal victimization can be sought and can also be examined all parties involved in an act of violence in the occurrence of a crime and not only pay attention to the perpetrators but also need to pay attention to the victims, observers (witnesses), law makers, police, prosecutors, judges, parents, children and so on.

The incest case is not an ordinary rape case, but rather concerns the family's trust which is no longer a place to take shelter. Article 10 of the Republic of Indonesia Law No. 23 Year 2004 concerning the Elimination of Domestic Violence formulates the rights of victims to obtain protection from family, police, prosecutors, courts, advocates, social institutions, or other parties both temporarily and based on the stipulation of protection orders from the court, health services according to medical needs, special handling related to the confidentiality of victims, assistance by social workers and legal assistance at each level of the inspection process in accordance with statutory provisions; and spiritual guidance services.

Implementatively, the government and the community need to pay attention to the psychological improvement and return experienced by children. The government together with all components of society continue to monitor deviant behavior that occurs in the community in an effort to suppress cases that occur in the community. NGOs and Legal Experts can provide socialization to the public about the law that will be applied if committing unlawful actions and report incest cases.

CONCLUSION

Incest is sexual violence that can be done against children. This case has the tendency to be a veiled crime because it occurs between people who have family relations. It is not easy for children or people in the family environment to report this case. The perpetrator may be someone who has superiority in his family, so he can pressure and threaten everyone in his family not to report. Reporting can also cause family breakdown or divorce and loss of a breadwinner in the family. Legal protection for victims is provided through law enforcement against perpetrators and fulfillment of victims' rights in legal processes, medical and psychological services, and other special services. The government is expected to create a rehabilitation center for children and a safe house for victims of incest by providing counseling and therapeutic facilities to restore the victim's condition. NGOs and legal experts are expected to be able to provide legal socialization so that the community understands that incest is a serious crime. NGOs are also expected to provide legal assistance to victims in demanding justice for victims.

REFERENCES

- Ahmadi, A. (2000) *Psikologi Sosial*, Jakarta: Rineka Cipta.
- Arief, B.N. (2007). *Masalah Penegakan Hukum Pidana Dalam Penanggulangan Kesehatan*, Jakarta: Kencana.
- Dellyana, S. (2018). *Wanita dan Anak di Mata Hukum*, Jakarta: Liberty.
- Hendry, E. 2003. *Monopoli Tafsir Kebenaran Wacana Keagamaan Kritis dan Kekerasan Kemanusiaan*, Jakarta: Persada Press.
- Joni, M. (1999). *Aspek Hukum Perlindungan Anak Dalam Perspektif Konvensi Hak Anak*, Jakarta: Citra Aditya Bakti.
- Kansil, C.S.T. (2019). *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta: Balai Pustaka,.
- Kartono, K. (2019). *Psikologi Abnormal dan Abnormalis Seksual*. Jakarta: Mandar Maju.
- Komnas Perempuan. (2018.) *Korban Bersuara, Data Bicara Sahkan RUU Penghapusan Kekerasan Seksual Sebagai Wujud Komitmen Negara*. Catatan Kekerasan Terhadap Perempuan Tahun 2018. Jakarta, 6 Maret 2019
- Kusuma, M.W. (1982). *Analisa Kriminologi Tentang Kejahatan-kejahatan Kekerasan*, Jakarta: Ghalia Indonesia.
- Lembar Fakta dan Poin Kunci Catatan Tahunan (CATAHU) Komnas Perempuan Tahun 2018 Tergerusnya Ruang Aman Perempuan dalam Pusaran Politik Populisme Jakarta. (2018).
- Masyitoh, D. (2017). Perilaku Incest: Tindakan Kriminal Dan Penyimpangan Perilaku. *An-Nisa'* 10(1). Accessed from <http://ejournal.iain-jember.ac.id/index.php/annisa/article/view/640>.
- Noviana, I. (2015). Kekerasan seksual terhadap anak: dampak dan penanganannya. *Sosio Informa* 1(1), Accessed from <https://ejournal.kemsos.go.id/index.php/Sosioinforma/article/viewFile/87/55>, 16.
- Poerwandari, E.K. (2000). *Kekerasan terhadap Perempuan: Tinjauan Psikologi Feministik*. Jakarta: Convention Wacht.
- Poerwandari, E.K. (2004). *Mengungkap Selubung Kekerasan Telaah Filsafat Manusia*, Jakarta: Kepustakaan Eja Insani.
- Retnaningrum, D. H. (2009). Incest Sebagai Bentuk Manifestasi Kekerasan Terhadap Perempuan. *Jurnal Dinamika Hukum*, 9(1), 19-28.
- Sadarjoen, S.S. (2005). *Bunga Rampai Kasus Gangguan Psikoseksual*, Bandung: Refika Aditama.
- Salter, M. (2016). The privatisation of incest: The neglect of familial sexual abuse in Australian public inquiries *The sexual abuse of children: Recognition and redress*. Accessed from https://www.researchgate.net/profile/Michael_Salter7/publication/294787404_The_privatisation_of_incest_The_neglect_of_familial_sexual_abuse_in_Australian_public_inquiries/links/56c4069408aee3dcd416850d.pdf.
- Setyowati, I. (1990). *Aspek Hukum Perlindungan Anak*, Jakarta: Bumi Aksara.
- Suyanto, B dan Emy Susanti. (2016). *Wanita Dari Subordinasi dan Marginalisasi Menuju ke Pemberdayaan*, Surabaya: Airlangga University Press.
- Wahid, A. (1998). *Islam Tanpa Kekerasan*, Yogyakarta: LKS Yogyakarta.

Gusti Ayu Kade Komalasari
Faculty of Law
University of Mahendradatta, Denpasar, Bali, Indonesia
Email: komalasari_51@yahoo.co.id

Anak Agung Sagung Poetri Paraniti
Faculty of Law
University of Mahendradatta, Denpasar, Bali, Indonesia
Email: sagung.poetriparaniti@gmail.com