

Research Article

Legal Protection for Children Victims of Postpartum Depression

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ABSTRACT

Children are a gift given by God through a woman. The presence of a child certainly raises many new adaptations in family life. The transition period to face a new life turns out to be more or less a problem that results in children; one of which is postpartum depression in a mother. This article aims to examine the forms of legal protection for a child who is a victim of postpartum depression. This article uses a normative juridical approach and secondary data with descriptive analytical research specifications and qualitative analysis. Based on the results of the study, postpartum depression is included in the category of mental illness model caused by the mental illness with clinical depression symptoms that affect psychological conditions ranging from excessive anxiety, neglecting children, to physically injuring children. This form of legal protection for children is stated in Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection. Regarding the accountability of perpetrators, for the postpartum depression which reflects on Article 44 of the Criminal Code, it is necessary to have an examination first before determining the responsibility to be imposed to overcome and prevent postpartum depression.

Keywords: Legal Protection; Child; Postpartum Depression.

A. INTRODUCTION

The birth of a child in the world is a form of gift given by God through a woman. Conceiving and giving birth is a woman's nature that most women look forward to become a mother. The main form of parental struggle for a woman is not only to give birth to a child into the world. The journey of caring for and raising a child is also the next task when you become a parent. It is a transition that occurs in life when a woman has given birth to a child. Many things need to be learned so that it takes adaptation to a new life. During this adaptation period, there are many changes in psychological conditions from fatigue to depression after childbirth.

This change in the psychological condition of a mother will certainly reduce the feeling of happiness that leads to excessive anxiety as not felt before (Qi, et al., 2021). This happens a lot for women who are experiencing childbirth for the first time. The condition experienced by a woman like this is often referred to as the baby blues syndrome. Baby blues syndrome is a syndrome of emotional disturbance that is often seen at the beginning after giving birth, which is characterized by several symptoms, namely easy crying, often feeling offended and blaming yourself (Gutira, & Nuryanti, 2010). The effect on a person regarding these symptoms is different and not all women feel the baby blues syndrome. Basically, these symptoms can go away on their own, but what is

worried is if this condition develops more severe and affects the child. Conditions that are more severe than the baby blues syndrome are called experiencing postpartum depression, which is included in the factors that cause parental violence against children in the category of psychological illness (Maknun, 2017).

Technological advances through the news in various media, especially regarding the impact of the baby blues syndrome to postpartum depression, are often heard. This is closely related to the mental health of the mother, especially when it comes to committing a crime against her own child. These actions range from child abuse to fears that they could kill the child.

An example of this is the case of a mother in Central Buton, Southeast Sulawesi, who drowned her 4 (four) month old baby. Since the birth of her first child, the mother has experienced the baby blues syndrome, which at that time was still under the supervision of her family. This was not expected by his family to happen to his second child until he killed his own child (Kompas online, 2020). Another case occurred in Bandung in which a woman killed her baby who was only a few months old and had attempted suicide several times (BBC News, 2021).

Article 28 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that every child has the right to survival, growth and development, and the right to protection from violence and discrimination. From the article, it can be concluded that a child has the right to get protection from violence not only in the wider community but also in his own family. Regarding the age limit, it is stated

in Article 1 paragraph (1) of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection which states that a child is someone who is not yet 18 (eighteen) years old, including children who are still young in the womb.

Postpartum depression illustrates the condition that a mother can commit a crime against her child but in everyday life her condition looks fine. If a mother is affected by postpartum depression, it is necessary to pay attention to the form of accountability for this, especially to children and their mental health conditions.

The problems in this article are first, what is the form of legal protection for children as victims of postpartum depression; and second, what are the forms of action related to the condition of postpartum depression and the forms of accountability of the perpetrators.

Several previous studies have stated that cases of mothers suffering from baby blues syndrome are quite high with sudden hormonal changes in these mothers in a short time which triggers the emergence of baby blues syndrome (Suryati, 2008). The next article written by Lina Wahyu Susanti and Anik Sulistiyanti describes that this baby blues syndrome can lead to more severe mental disorders whose symptoms are the desire to hurt the baby or can hurt themselves as well which is called postpartum depression (Susanti, & Sulistyani, 2016). Another article also explains that the factor of baby blues syndrome to postpartum depression can be caused by age factors, types of labor and maternal activities before giving birth (Mulyati, & Khoerunisa, 2019). In

addition, several previous studies have also stated that depression is also related to maternal obesity which undergoes changes in her body that will affect her mental health (Radzi, Jenatabadi, & Samsudin, 2021). In an article written by Ryanawati et al stated that "the risk of postpartum depression increases with labor complications, unwanted pregnancy, and low family income but decreases with age, stronger self-efficacy, and improved coping strategy" (Putriarsih, Budihastuti, & Murti, 2018). In an article written by Valencia et al also stated "risk factors previously found to correlate with postpartum depression in a civilian include prenatal depression, childcare stress, limited social support, difficult infant temperament, and maternity blues" (Garcia, Meyer, & Witkop, 2021). If it affects the physical condition of the child then this can be included in the category of violence. "Concerning the solution to the problem of crunch children in a previous research, which stated that it must be prioritized by kinship processes but it is still being repeated the same act will immediately take legal action" (Sugiharto, & Amartiwi, 2018).

Previous research has also stated that "postpartum mood disorders such as postpartum depression are estimated to affect 10-20% of women and it is a serious health problem for both the mothers and their children" (Prevatt, Lowder, & Desmarais, 2018).

This article differs from previous research, in that it describes efforts to provide protection for children as victims as a result of postpartum depression experienced by their biological mothers.

B. RESEARCH METHOD

The research method used in this article is the normative juridical research method. Normative juridical research is legal research that relies on library materials. Legal research methods are used to obtain information from various aspects related to research (Marzuki, 2013). The research specifications used are analytical descriptive, namely to describe a problem in a certain area or at a certain time that describes the research results with as complete data as possible (Mukti, & Achmad, 2017) and tries to reveal the facts completely and as they are (Suteki, & Taufani, 2018). The data collection technique in this article was carried out by library research. The data analysis method was carried out by collecting data through the study of library materials or secondary data which includes primary, secondary and tertiary legal materials in the form of documents and applicable laws and regulations.

C. RESULTS AND DISCUSSION

1. Forms of Legal Protection for Children Victims of Postpartum Depression

Article 1 Paragraph (2) of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection states that child protection is all activities to guarantee and protect children and their rights, their right to be able to live, grow, develop, and participate optimally in accordance with human dignity and dignity, and to receive protection from violence and discrimination. Protection of these children is not only the responsibility of the

family and parents but also the responsibility of the state, government, and society (Indirati, 2014).

The role of parents as the closest family is the main factor in shaping children's behavior. One form of child protection is the realization of legal certainty for children (Said, 2018). But in reality, until now there are still many cases that befall children as victims which do not rule out the possibility that the perpetrators are their own parents. As happened to children who are victims of biological mothers who experience baby blues syndrome to postpartum depression, where most of the children who become victims are toddlers or even toddlers who do not yet have the ability to express their desires and the truth about what happened to them.

Children who are victims of perpetrators who suffer from postpartum depression must receive intensive care from medical personnel as possible to speed up the healing period if they experience physical injuries to their children. In addition, it is necessary to foster and obtain social security services so that the mental, physical, spiritual and social aspects of children are well maintained and do not hinder their future development as stated in Article 8 of Law Number 23 of 2002 in conjunction with Law Number 35 2014 concerning Child Protection.

Based on this, if the parents cannot guarantee the child's growth and development for the next life, then according to the provisions of Article 7 Paragraph (2) of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection, it is stated that children have the right to be cared for or adopted as a foster child or adopted child by another

person in accordance with the provisions of the applicable laws and regulations.

The handling of cases of children involved in legal issues is also regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Children in conflict with the law are children in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts.

Regarding children as victims of postpartum depression, this is a qualification for children who are dealing with the law as victims of criminal acts. The Juvenile Criminal Justice System prioritizes the Restorative Justice approach, namely the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator or victim and other parties together in terms of a fair settlement by emphasizing restoration to its original state and not retaliation (Astari, 2015).

Such conditions related to postnatal mental health are often not paid attention to and are only followed up when there are case reports (Ertan et.al, 2021). The role of the family here is also the main target in the aim of reducing depression in postpartum women (Huang et al, 2021). In addition, in a study written by Gracia Fellmeth et al stated that the Edinburgh Postnatal Depression Scale (EPDS) works well as a screening tool to detect patients at risk for postpartum depression so that it can support women's mental well-being and help their treatment (Fellmeth et al., 2021).

Legal protection for children is not only contained in national law, but international law also

regulates this, one of which is the Convention on the Rights of the Child which has been ratified by Indonesia (Heidemans, 2015). Implementation of legal protection provided to children, among others regarding the provision of legal assistance, confidentiality of the identity of victims, arrest of perpetrators with preliminary evidence, provision of assistance in the form of health services to rehabilitation efforts (Kobandaha, 2017). Child protection is the overall activity regarding the guarantee and protection of children and their rights. To be able to realize quality, noble and prosperous children, efforts to protect children must be carried out from an early age starting from the fetus in the womb until the child is 18 years old (Sudrajat, 2011). This is because children are the future and the next generation of the nation, every child has the right to survival, growth and development, participation and the right to protection from acts of violence and discrimination. Therefore, it is not only through applicable regulations that play a role in realizing child protection, but the role of the government and especially the community must discuss prevention and solutions so that they consider that problems in children are serious and need special attention.

2. Forms of Action Due to Postpartum Depression and Accountability of Perpetrators

The occurrence of baby blues syndrome to postpartum depression is a form of mental health disorder that can occur in women after giving birth (Martinez et al., 2021). Cases of baby blues syndrome or postpartum depression do not only occur in Indonesia but also in other countries such as

Malaysia, Singapore, the Netherlands, and Taiwan (Yuniwati, Fithriany & Fahriany, 2016). Baby blues syndrome is characterized by emotional changes and sensitive feelings to the concern of not being able to take care of their baby for a period of no more than two weeks after giving birth. However, the condition will worsen if clinical depression symptoms occur which affect the psychological condition for a period of up to one year after giving birth, which is what is known as postpartum depression. So the definition of postpartum depression is a non- psychotic depressive disorder with diagnostic criteria starting four weeks after giving birth (Budiman et al., 2020).

Mental health is closely related to changes in hormones related to changes in a mother's emotional levels to impact violent behavior that can happen to children, one of which is by injuring their bodies. The main causes of criminal acts, especially violence that can physically injure a child, can be caused by many models as qualifying causes, including (Safrina, Jauhari, & Arif, 2010): a. Psychodynamic model: namely the occurrence of violence due to lack of mothering. Mothering here means the lack of care from a mother, resulting in not being able to take care of her own child properly; b. Personality or character trait: the result of immaturity as a parent, resulting in frustration in raising children; c. Social learning model: there is a feeling of dissatisfaction with being a parent which is disturbed by the presence of a child and requires children to always be independent like adults. d. Family structure model: which refers to the dynamics between families who have a relationship because one event will cause another event with

violence; e. Environmental stress model: which considers children and women as a problem that suppresses life where if there is a change in the environment such as not having a job or having low education, violence against children will arise; f. Social - Psychological model, in this model the main factor is the emergence of frustration and stress where stress can occur due to many reasons including family problems and others; g. Mental illness model: violence that occurs because of a neurological disorder or mental illness.

Based on this, it can be concluded that postpartum depression can be included in the mental illness model caused by mental illness.

Generally, postpartum depression occurs in mothers who have recently experienced the birth process. In the midst of adaptation in this new life, a mother's emotions can change, especially if there is a lack of support from her closest family (Kurniasari, & Astuti, 2015). Symptoms of postpartum depression are many, ranging from feelings of irritability and anxiety to the desire to hurt yourself to hurt your child. In addition, there are other factors that can cause postpartum depression, namely in terms of age, which tends to be young, which is still in the process of postpartum recovery but is required to learn how to take care of the baby. In terms of age, which tends to be young, this can be called the occurrence of early marriage, which in terms of health and lack of knowledge also results in many complaints in raising children and resulting in mental disorders (Mahfudin, & Waqir'ah, 2016). The Child Protection Act has mandated the prevention of underage marriage

because this is a traditional practice that endangers children and violates children's rights (Fernando, 2020).

The occurrence of baby blues syndrome to postpartum depression can have an impact on children being treated harshly by their mothers, which usually happens to children who are still minors or even children under three years who are still unable to speak the truth. If it injures a child physically, this certainly violates the rights of the child as stated in the 1945 Constitution of the Republic of Indonesia.

Postpartum depression is closely related to a disturbed mental health condition, then the matter of criminal liability if the result of his actions is proven to have violated applicable regulations, it can be processed through legal channels. Psychiatric disorder here means the occurrence of disturbances in the brain characterized by changes in thought patterns, behavior, and emotions that can be captured by the five senses. From a legal point of view, of course there must be criminal responsibility for the act, even if it was done by the biological mother herself. However, the problem is that if this is done to mothers with postpartum depression, their mental health is disturbed.

It is regulated in Article 44 of the Criminal Code regarding the irresponsibility of actions by people who because their souls are disabled in their bodies or disturbed because of diseases that change their minds. They should not be punished. Regarding criminal liability due to the form of action caused by postpartum depression based on Article 44 of the Criminal Code, namely the need to undergo a

sequence of activities by making information reports and visiting the scene of the case, issuing an investigation warrant, examining witnesses and victims, developing information from the information provided by witnesses and victims, make arrests, search and confiscate evidence (Sinaga, Erdianto, & Diana, 2016).

Before carrying out an examination of the suspect, it is necessary to ensure that a psychological examination is carried out whether the suspect is experiencing postpartum depression or not. Examinations can be carried out by forensic doctors to carry out psychological tests and other experts. If it is proven that someone suffers postpartum depression in the category of mental disorders that meet Article 44 of the Criminal Code, the investigation process can be stopped and can be submitted to medical personnel for the mental healing process. However, if it is not proven to have a mental disorder as it is known that postpartum depression sufferers can be seen in good condition in their daily lives, then for their actions, those who commit criminal acts can be accounted for in accordance with applicable regulations.

The sentencing process can be seen from the results of the examination of the victim where the victim is his own child to determine the criminal imposition of the suspect which is his biological mother. In addition, there is also a need for public education efforts that are given to the community, which is expected as a form of prevention and overcoming the occurrence of criminal acts in children because as it is known that violence to the crime of

murder that afflicts children is often heard, especially if the perpetrators are their own biological parents. (Erika, Rochaeti, & Rozah, 2019). To prevent these problems, suggestions can be made regarding postnatal care that is cost-effective and accessible as routine, follow-up practices by telephone, and by ensuring the availability of community and labor resources so as to improve women's welfare by including a comprehensive assessment of health mental, physical, social, and psychological (Lamus et al, 2021).

D. CONCLUSION

Postpartum depression based on the causes of criminal acts in children can be included in the category of mental illness model due to mental disorder. Legal protection for children as victims of postpartum depression needs special attention and supervision because the majority of victims are toddlers or children who have not been able to reveal what happened to them. Legal protection for children is regulated in Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection which has provided complete protection to children starting from the child's age category to sanctions for perpetrators. In realizing the protection of children in Indonesia, there is a need for cooperation between the government and the community so that the rights of children are properly fulfilled. The form of action due to postpartum depression is the presence of clinical depression symptoms which affect psychological conditions such as excessive feelings of anxiety, loss of parenting

ability to neglect and physically injure the child within a period of up to one year after giving birth. Concerning the responsibility of perpetrators who experience postpartum depression, it is necessary to ensure that there is a mental health examination first because reflecting on Article 44 of the Criminal Code, for someone who is proven to have committed a crime but has a mental disability, his actions cannot be accounted for. Some cases of mental health disorders due to postpartum depression are often seen in their daily lives that do not look like they are experiencing mental health problems, but there are also those who are proven to have mental health disorders that require special medical treatment.

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