

## Legal Protection for Children as Victims of Sexual Violence

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### Abstract:

One of the crimes that has become a recent phenomenon is sexual violence, especially against children. Children are an invaluable gift given by God to every human couple to be cared for, protected and educated well. He is a human being who has limited physical, mental and social abilities to overcome the various risks and dangers he faces and also automatically still depends on other parties, especially family members who play an active role in protecting and looking after him. The nature of this research is descriptive analysis, meaning that from this research it is hoped that a detailed and systematic picture of the problems to be studied will be obtained. The intended analysis is based on descriptions, the facts obtained will be subjected to careful analysis to answer the problem. So that you can answer questions according to the main problem in this writing. This research was carried out using data collection tools, namely: literature study or document study (documentary study) to collect secondary data related to problems in the protection of child victims of sexual violence. In the form of legal protection for children victims of sexual crimes are legal assistance, rehabilitation, health services and social security in accordance with physical, mental, spiritual and social needs as an effort to restore the condition of children victims of sexual violence who have long-term trauma. Obstacles in providing legal protection for child victims of sexual crimes are legal substance, legal structure, legal culture, and facilities and infrastructure that are not yet running optimally.

**Keywords:** Law Protection, Children, Sexual Violence.

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## 1. Introduction

Children are the hope of the nation in the future, the rights that children must obtain from their parents since the child is born into the world based on applicable laws and regulations. Legal protection of children can be interpreted as an effort to legally protect various freedoms and human rights of children (fundamental rights and freedoms of children) as well as various interests related to children's welfare (Suryamizon, 2017)

Children as a trust of God Almighty have the right to receive protection from the time they are in the womb until the child becomes an adult. This protection regarding children has been put forward for a long time. The idea of children's rights began after the end of World War I. As a reaction to the suffering caused by the disasters of war, especially those experienced by women and children. A female activist named Eglantyne Jebb developed 10 children's rights statements in 1923 which were adopted by the Save the Children Fund International Union. After the end of World War II, on 10 December 1948 the UN General Assembly adopted a declaration of human rights, which ultimately

resulted in 10 declarations of children's rights being adopted and declared by the UN, namely in the convention on the rights of the child on 20 November 1989. (Hasin, 2020) One of the crimes that has become a recent phenomenon is sexual violence, especially against children. Children are an invaluable gift given by God to every human couple to be cared for, protected and educated well. He is a human being who has limited physical, mental and social abilities to overcome the various risks and dangers he faces and also automatically still depends on other parties, especially family members who play an active role in protecting and looking after him. Protection of children's lives and livelihoods is still the responsibility of both parents, their families, society and the state. This protection can take the form of meeting the needs for clothing, food and shelter. Not only that, the protection given to a child can also be in the form of protection for the child's psychological or mental condition, especially his mental development. (Christofher Dylan Antonio, 2022).

The definition of child protection in Law Number 35 of 2014 Article 1 paragraph (2) states that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with their dignity and worth. humanity, and receive protection from violence and discrimination. Child protection can also be interpreted as all efforts aimed at preventing, rehabilitating and empowering children who experience acts of abuse, exploitation and neglect in order to ensure their survival and normal growth and development, both physically, spiritually and socially. In the Child Protection Law Number 35 of 2014 Article 20 it is also stated that those who are obliged and responsible for implementing child protection are the state, government, community, family and parents. So child protection is not the responsibility of the state or parents alone, but must be carried out jointly by the state, government, community, family and parents so that effective, rational, positive, responsible and beneficial implementation of child protection can be achieved.

The Convention on Children's Rights is an international instrument in the field of Human Rights with the most comprehensive coverage of rights<sup>1</sup>, it is a convention in the field of Human Rights which includes civil and political rights as well as economic, social and cultural rights. In connection with the principle of the best interests of children, Article 3 paragraph (1) of the Convention on the Rights of the Child states that in all actions concerning children carried out by government or private social welfare institutions, judicial institutions, government institutions or legislative bodies, the interests that are The best for the child must be the primary consideration. Sexual crimes against children are currently a crime that has received quite a lot of attention among society. Often in newspapers or magazines there are reports of sexual crimes occurring. (Paradias & Soponyono, 2022).

If you study history, actually this type of criminal act has existed for a long time, or can be said to be a classic form of crime that will always follow the development of human

culture.(Sania & Utari, 2019). This crime will always exist and develop all the time even though it may not be too different from before. Sexual crimes do not only occur in big cities with relatively more advanced culture and legal awareness or knowledge.

The rise of sexual crimes against children made the government pay attention and commit to dealing with this, until Law Number 35 of 2014 was issued concerning amendments to Law Number 23 of 2002 concerning Child Protection which was made with the aim of improving the Law. beforehand so that child victims, especially victims of sexual violence, can be better protected. The regulations relating to acts of sexual violence against children in this Law include the threat of criminal sanctions and fines against perpetrators of crimes against children, with the aim of providing a deterrent effect, as well as encouraging concrete steps to restore the child's physical, psychological and social health. victim. as an extraordinary crime

This is because a child does not yet have physical and mental maturity, so he needs special protection and care, including appropriate legal protection, before and after birth. Violence is very close to a child's life, children's experiences of dealing with violence are very diverse both in terms of forms of violence experienced, perpetrators of violence, places of occurrence, and causes of sexual violence. (Sitompul, 2015) Sexual violence that befalls children can result in children experiencing trauma. Therefore, children as victims of sexual violence must receive protection so that they feel safe and that the trauma they have experienced will not happen again. So that children who experience sexual violence who have reported the incident to the police should immediately receive good treatment, both medically and psychologically, lest the process of seeking justice will become a prolonged trauma. In this regard, it is important to provide protection for children from sexual violence. This article will discuss forms of legal protection for child victims of sexual violence.

## **2. Analysis and Discussion**

The handling of sexual crimes against children in the Indonesian criminal law system still tends to highlight crimes from the perspective of the perpetrator. Of course, this is less balanced if the child's perspective as a victim is ignored. However, the elements that cause crime would not occur if there were no victims. Victims and perpetrators are two elements of a crime. Therefore, protection of children as victims of sexual violence crimes is very important. Children as victims receive little attention, so far they are only represented by the state as recipients of suffering, who will retaliate against the perpetrators, which are implemented with criminal sanctions that are regulated by law. Punishment of perpetrators of sexual crimes does not necessarily give children a sense of security as victims. Many victims have not received justice and the victims have returned to society due to trauma. There is a need for laws that can provide justice for

victims of what the perpetrators of crimes do. So it is not enough to implement the revenge system that is needed to resolve this case. (Safaruddin Harahap, 2016)

Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated to the 1945 Constitution of the Republic of Indonesia) states that "Indonesia is a country of law". As a legal state, the state guarantees the legal rights of its citizens by providing legal protection. As quoted by Satjipto Raharjo, Fitzgerald stated: the beginning of the emergence of the theory of legal protection came from natural law theory or the school of natural law. The school pioneered by Plato, Aristotle (Plato's student), and Zeno (founder of the Stoic school), stated that law originates from God who is universal and eternal, and that law and morals cannot be separated. Adherents of this school view that law and morals are internal and external reflections and rules of human life which are realized through law and morals. The concept of legal protection for the people originates from the concepts of recognition and protection of human rights and the concepts of *rechtsstaat* and the rule of law. (Handayani, 2015)

The concept of recognizing the protection of human rights provides the content, while the *rechtsstaat* and the rule of law create the means, thus the recognition and protection of human rights will flourish within the framework of the "*rechtsstaat*" and "the rule of law" Article 1 point 6 of Law Number 31 of 2014 concerning Protection of Witnesses and Victims, states "Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or Victims which must be implemented by the Witness and Victim Protection Agency (hereinafter abbreviated as LPSK) or other institutions in accordance with the provisions of this Law" (Pradityo, 2016) Legal protection for the Indonesian people is an implementation of the principle of recognition and protection of human dignity which is based on Pancasila and principles. There are several articles that can be charged with forms of sexual violence against minors, whether rape or molestation.

Sexual violence against children can be punished according to applicable regulations. Protection of children in Indonesia from the threat of sexual violence can be seen from the enactment of the child protection law. Specifically, Article 81 paragraph 2 of Law Number 35 of 2014 contains provisions for a minimum prison sentence of five years and a maximum of fifteen years as well as a maximum fine of five hundred billion rupiah for someone who uses violence or threats of violence to force a child to have sexual intercourse with him or another person. Apart from that, someone who knows and allows obscene acts can also be punished, not only those who commit obscene acts based on the provisions of Article 82 of Perpu Number 17 of 2016 jo. Article 76E of Law Number 35 of 2014. In the Child Protection Law, the articles charged are usually Article 76 D j.o Article 81 paragraph (1), Article 76 D j.o Article 81 (2), and Article 76 E j.o Article 82 (1 ). The existence of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is a legal tool that is able to protect children in various criminal acts, especially sexual harassment. (Ananda & Ufran, 2023)

This law states that sexual violence against children is a criminal offense so that the perpetrator can be brought to the police with the assistance of related parties.

What is meant by a child according to Article 1 Number 1 of the Law is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Children as victims of sexual crimes are also mentioned in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Domestic violence is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering, and/or domestic neglect, including threats to commit acts, coercion, or confiscation. Article 69 letter A of Law Number 35 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, states that special protection for child victims of sexual crimes as intended in Article 59 paragraph (2) letter j is carried out through efforts: a. Education about reproductive health, religious values, and moral values; b. Social rehabilitation; c. Psychosocial assistance during treatment until recovery; and d. Providing protection and assistance at every level of examination starting from investigation, prosecution, up to examination in court.

The rights of children who are victims of sexual crimes, namely legal assistance to victims of criminal acts, is very necessary, especially for children who are victims of sexual crimes. Because a child who encounters law enforcement, for example an investigator, prosecutor or judge, will likely feel afraid to reveal all the things they experienced as a victim. Legal assistance to victims of crime must be provided, whether requested or not. This is important to do because the level of legal awareness of the majority of victims who suffer from this violence is still low. The attitude of allowing crime victims not to receive proper legal assistance can result in the condition of crime victims getting worse. (Mastur et al., 2020)

However, children who are victims of crime specifically have the right to receive legal assistance. even though their interests have been represented by the prosecutor. It is very rare for child victims of sexual crimes to be accompanied by a legal advisor, but all victims during the examination process still receive assistance and the judge presiding over the trial always asks questions, both to the public prosecutor and also to the victim, the judge often even postpones the trial if the victim's companion is not present. Repressive legal protection in the form of providing restitution and compensation aims to restore the losses experienced by victims, both physical and psychological, as regulated in Articles 98 to 101 of the Criminal Procedure Code. Counseling is provided to children who are victims of sexual crimes who are experiencing trauma in the form of rehabilitation. Victims of crimes of sexual violence usually not only cause/incur physical injuries but also suffer psychological stress, so apart from physical recovery, they also need psychological recovery by providing counseling guidance until the child recovers. Implementation of Rehabilitation is regulated in the Regulation of the Minister of Social Affairs (Permensos) of the Republic of Indonesia Number 09 of 2015 concerning

### Guidelines for Social Rehabilitation of Children in Conflict with the Law by Social Welfare Organizing Institutions

What is meant by labeling is an action that gives a special image or impression to society which will give rise to an assessment by society of child victims of rape, for example, A is a child rape victim, when A's name and face are shown in the mass media as one of the rape victims. , then society's view of person A will change drastically. Society will consider her a rape victim, and often even considered a dirty person. This societal assessment will continue to follow the child even until the child is an adult. (Yuliantini et al., 2021)

Article 59 of Law Number 23 of 2002 concerning Child Protection regulates the obligations and responsibilities of the government and other state institutions, to provide special protection to:

- a. Children in emergency situations
- b. Children in conflict with the law
- c. Children from minority and isolated groups
- d. Children exploited economically and/or sexually
- e. Children who are trafficked
- f. Children who are victims of abuse of narcotics, alcohol, psychotropics and other addictive substances (NAPZA)
- g. Children who are victims of kidnapping, selling and trafficking
- h. Children who are victims of violence, either physically and/or mentally.
- i. Children who have disabilities and
- j. Children who are victims of abuse and neglect

Article 17 of Law Number 23 of 2002 concerning Child Protection states that every child whose freedom is deprived has the right to:

- a. Receive humane treatment and be placed separately from adults.
- b. Obtain legal assistance or other assistance effectively at every stage of the applicable efforts
- c. Defend yourself and obtain justice before an objective and impartial juvenile court in a trial closed to the public.

Every child who is a victim or perpetrator of sexual violence or who faces a legal victim has the right to confidentiality. Specifically for children in conflict with the law, according to Article 64 paragraph (1) of the Law on Child Protection, it is directed at children in conflict with the law and child victims of criminal acts. Based on Article 64 paragraph (2) of the Law on Child Protection, protection for children in conflict with the law is carried out through:

- a. Humane implementation of rights with the child's dignity and rights.
- b. Provision of special facilities and infrastructure
- c. Provision of special accompanying officers for children from an early age.

d. Continuous monitoring and recording of the development of children in conflict with the law.

e. Providing guarantees to maintain relationships with parents or family.

f. Protection from providing identity through the mass media and to avoid labeling.

Moreover, if legal regulations do not yet exist, then law enforcers will look for other legal bases which they think are more appropriate to apply in that incident. In efforts to protect children legally, harmony or coherence is needed between various regulations of different degrees. Incompatibility between legal rules can affect law enforcement. The paradigm that has been established is that the function of the Child Protection Law is still limited to the realm of taking action against perpetrators of sexual violence against children, not to preventive or prevention efforts. The principle is that a legal instrument must function as an engineering tool.

The crime of rape in the Criminal Code can be divided into 2 (two), namely the crime of rape for sexual intercourse which is regulated in Article 285 and the crime of rape for committing obscenity which is regulated in Article 289. The crime of rape for sexual intercourse in Article 285 It is explained that, whoever, by force or threat of violence, forces a woman who is not his wife to have sexual intercourse with him, shall be punished, for rape, with a maximum prison sentence of twelve years. For the criminal act of rape to be completed to be completed, sexual intercourse must occur between the perpetrator and the victim, in the sense that there is no criminal act of rape to have sexual intercourse if there is no sexual intercourse. (Hambali, 2019)

The rise of moral crimes nowadays is related to behavior in sexual relations, usually in the form of sexual immorality, whether committed by a pair of adults or fellow adults or with minors. The perpetrator of this crime felt that children could be a target to channel their sexual desires. This is influenced by the opinion that children are not capable enough to understand that the act is a criminal act or that children do not have the courage to refuse the perpetrator's wishes. Cases of sexual violence against children often cause difficulties in resolving them both at the investigation, prosecution and decision stages.

Discussing sexual crimes against children, it is necessary to examine in more depth the factors that hinder legal protection for child victims of sexual crimes, the forms of protection and see whether legal protection for child victims of sexual crimes is in accordance with Law Number 23 of 2002 concerning Child Protection . Child victims of sexual crimes have the right to receive protection from various parties, not only from their families but also from other related parties. The reality that occurs in society is that the protection of child victims of sexual crimes often experiences obstacles caused by several factors.

### 3. Conclusion

In the form of legal protection for children victims of sexual crimes are legal assistance, rehabilitation, health services and social security in accordance with physical, mental, spiritual and social needs as an effort to restore the condition of children victims of sexual violence who have long-term trauma. Obstacles in providing legal protection for child victims of sexual crimes are legal substance, legal structure, legal culture, as well as facilities and infrastructure that are not yet operating optimally. Obstacles in providing legal protection for child victims of sexual crimes are legal substance, legal structure, legal culture, as well as facilities and infrastructure that are not yet operating optimally.

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