

# Analysis of Legal Protection Measures on Children's Rape Victims through Child Criminal Judicial Mechanism

Mohamad Andi Rochman<sup>\*)</sup>, Aryani Witasari<sup>\*\*)</sup> and Peni Rinda Listyawati <sup>\*\*\*)</sup>

<sup>\*)</sup> Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: [fakhri.dhika@gmail.com](mailto:fakhri.dhika@gmail.com)

<sup>\*\*)</sup> & <sup>\*\*\*)</sup> Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang

## Abstract.

*The purpose of this study is to examine, identify and analyze the concept of the fulfillment of the rights of victims of protection in the judicial process of criminal acts of child molestation progressively. The approach method used in this research is sociological juridical. The specification of this research is descriptive analytical. Article 90 of the Juvenile Justice System Law concerning children who are victims of criminal acts of obscenity have the right to rehabilitation (Recovery to physical and mental and social medical, both inside and outside the Witness and Victim protection institution), Provision of Compensation (Restitution), and Providing compensation. In the process of investigating and prosecuting children's cases, in conducting an investigation of children's cases, investigators are required to ask for considerations or suggestions from community advisors. The process of examining children, apart from the absence of official attributes used in the trial, the difference between adult and child trials is the closed trial system. The examination process at the trial court, the judge in examining the child's case in the children's trial is declared closed to the public except for the reading of the verdict. The concept of the fulfillment of victim protection rights in the judicial process of child obscene crimes can be concluded progressively, namely first, Cross Examination. Second, the principle of fast, simple and low cost justice (systematic resocialization of the offender).*

*Keywords: Children; Protection; Victims.*

## 1. Introduction

In the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3) states that the State of Indonesia is a legal state based on Pancasila and the 1945 Constitution which contains the meaning of all actions, patterns of behavior of citizens which must also be synchronized with the norms set by the state.<sup>1</sup> The purpose of the Indonesian state is stated in the preamble to the fourth paragraph of the Constitution which states that the Government of the State of Indonesia has been established which aims to protect the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order that is based on freedom, lasting peace and social justice.<sup>2</sup> So with this, the Indonesian people have the right to receive protection, safety and security in the perspective of the life of the nation and state.

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<sup>1</sup>Supriyono. (2020). *Criminology Study of Crime of Fencing the Stolen Goods*. Jurnal Daulat Hukum, 3(1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8407/4068>

<sup>2</sup>Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Sulchan, Achmad. (2020). *Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination*. Jurnal Daulat Hukum, 3(1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8409/4067>

However, the facts that occur in people's lives are not in accordance with the goals of the Indonesian state.<sup>3</sup>

Everyone cannot escape from various reciprocal relationships and interrelated interests between one another which can be viewed from various aspects, for example in terms of religion, ethics, socio-culture, politics, and including legal aspects. Judging from the plurality of interests, it often creates a conflict of interest, which in the end gives birth to what is called a criminal act. To protect these existing interests, a rule and or legal norm is made that must be obeyed. For people who violate the rule of law and cause harm to others, action will be taken in the form of compensation or fines, while for someone who has committed a crime will be subject to criminal sanctions in the form of corporal punishment, either imprisonment, confinement and/or fines.<sup>4</sup>

With the development of the times, there will be more and more people's needs that can cause problems in the community, so that the crime rate is higher which is related to violations of legal rules that have been determined by the previous community which are useful for protecting and creating a sense of peace and order in society. The crime rate increases due to the lack of public knowledge about criminal law and the lack of public awareness of the law causing someone to become a victim of a crime.

One form of crime that often occurs in society is sexual abuse committed by children or their victims against children. Seeing the current state of society, it is possible for a child to commit a criminal act of obscenity because it is too easy to access pornographic videos from the internet with a lack of attention from parents.<sup>5</sup> Children as creatures of God Almighty and social beings, have the right to live and be independent and receive good protection from parents, family, community, nation and state since in the womb. Therefore, all parties must ensure the survival and development of children.<sup>6</sup> They are the next generation of the nation and play a very strategic role as a determinant of the success of a nation.

By looking at the consequences experienced by victims of the crime of sexual abuse/rape, at this time law enforcement against perpetrators of criminal acts of sexual abuse of children begins with the examination at the level of investigation, prosecution and examination in court trials, both investigators, public prosecutors and judges apply the provisions of the articles of Act No. 35 of 2014 concerning Child Protection.

The reason that cases of sexual violence are not reported by victims to law enforcement officers for processing in court is due to several factors, including the

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<sup>3</sup>Isyadora Islami Salma, Rakhmat Bowo Suharto, and Widayati. (2020). *Sociological Juridical Review of Children Appointment Through The Determination Of Judges In The Religion Court Of Semarang*. Jurnal Daulat Hukum, 3(1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8406/3926>

<sup>4</sup>Damos Dumoli Agusman. (2013). *Suatu Pengantar Hukum Pidana Indonesia*. Bandung: Refika Aditama, p. 25.

<sup>5</sup>Sarwadi and Tri Bawono, Bambang. (2020). *Restorative Justice Approach in Diversion System for Settlement of Criminal Cases for Children in Indonesia*. Jurnal Daulat Hukum, 3(4), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/13145/4978>

<sup>6</sup>Leden Marpaung. (2004). *Kejahatan terhadap Kesusilaan dan Masalah Prevensinya*. Jakarta: Sinar Grafika, p. 1

victim feels ashamed and does not want the disgrace that has befallen her to be known by others, or the victim is afraid because she has been threatened by the perpetrator that she will be killed if he reported the incident to the police. This of course affects the mental development of the victims and also affects the law enforcement process itself to create a sense of justice for victims and the community.

According to Notohamidjojo, the law is the entire written and unwritten regulation which is usually coercive for human behavior in state society and between states which are oriented to two principles, namely justice and usability, for the sake of order and peace in society.<sup>7</sup>

The purpose of the author's research is to analyze the concept of fulfilling the rights of victim protection in the judicial process of criminal acts of child molestation progressively.

## 2. Research Methods

This research used sociological juridical method (social legal research) to examine and discuss the problems raised and used research specifications with descriptive methods. Descriptive method can be defined as the process of solving a problem being investigated by describing or describing the current state of the subject or object of research based on the facts that appear or as they are.<sup>8</sup> The data used for this research are primary and secondary data. To obtain data in this study, interview data collection methods and literature study were used. The data that had been obtained was then analyzed by qualitative analysis.

## 3. Results and Discussion

The application of progressive law, which is basically directed at these legal actors, is expected to be able to direct the laws produced by the legislative process, which tend to be elitist, to lead to the interests of justice and the welfare of the people complement each other with human aspects, both in human relations and the wider community.<sup>9</sup>

To apply progressive law to the fulfillment of the protection rights of child victims, by using 3 (three) research approaches. First, a case study, in civil law Indonesian law is seen as "considering" the "Main Case". In other words, the provisions of laws and regulations that support legal arguments on material facts, namely in cases (court decisions). Second, the Conceptual Approach, when this approach is carried out, there is no rule of law or no rule of law for the problems at hand. The researcher refers to the legal principles, as well as the concepts contained in the law.<sup>10</sup> Third, the statutory approach, in which the compiler will get information from various aspects in analyzing the problem. In the method of approaching legislation, the researcher focuses on understanding hierarchies, and

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<sup>7</sup>Syamsul Arifin. (2012). *Pengantar Hukum Indonesia*. Medan, Medan area University Press, p. 5-6

<sup>8</sup>Rony Hanitijo Soemitro. (1990). *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta, Ghalia Indonesia, p. 34

<sup>9</sup>Diana E. Rondonuwu. (2014). *Hukum Progresif: Upaya Untuk Mewujudkan Ilmu Hukum Menjadi Sebenar Ilmu Pengetahuan Hukum*. Lex Administratum, II(2), p. 1

<sup>10</sup>Peter Mahmud Marzuki. (2016). *Penelitian Hukum*. Jakarta, Kencana, p. 177-178.

the principles in laws and regulations that reflect the idea of the Principles of Justice.

So that the concept of the fulfillment of the rights of victim protection in the judicial process of child obscene crimes can be concluded progressively as follows:

- *Cross Examination*

To improve the Criminal Procedure Code regarding the rights of Children Victims of Restitution, Compensation and Rehabilitation in the view of Progressive law, it is necessary to have a cross examination<sup>11</sup> which is the adoption of the Anglo Saxon system needs to be formulated in the Criminal Procedure Code. The purpose of this process is to obtain the fulfillment of the rights of the victim who pays more attention to the interests of the victim's child, namely through the prosecutor contained in the prosecutor's demands in the juvenile justice process to LPSK. So that the right to restitution or compensation can be carried out according to the principles of fast, simple and low-cost justice. Besides that, it can also be through special legal assistance for Child Victims compared to LPSK which are not law enforcement officers.

The position of the victim in criminal justice as a party seeking justice has been neglected. When examined from the purpose of punishment in positive criminal law, criminals receive more attention such as rehabilitation, treatment of offenders, social adaptation, correctional and others. Management in criminal justice is a system that accepts its position as a subsystem of a larger system, namely society.<sup>12</sup>

So that the work of criminal justice must function as a justice administration that must be able to resolve criminal law problems both within the institution and its institutions fairly in society. The work of law enforcers in criminal justice, whether police, prosecutors, or judges in handling criminal cases, is a social subsystem bureaucracy that works in its environment, and has ways of achieving goals. The law is contained in the normative basis, namely the Criminal Code and the Criminal Procedure Code, as well as other legislation as instruments for the operation of criminal justice.

The weakness of the Criminal Procedure Code does not allow the Victim to file a claim for compensation that is immaterial in a clear and limited manner, in Article 99 Paragraph 2 and Article 100 of the Criminal Procedure Code states that this reimbursement of costs is only in the determination of the replacement sentence that has been issued by the aggrieved party if the Public Prosecutor does not is present, the hope of the Victim and the Victim's Family is dashed as the aggrieved party, not to mention if the aggrieved party does not know about the information on the Merger of Compensation Claims. For this reason, cross examination is needed as a judge's assessment in formulating, considering, and determining the type and amount of compensation for victims in the criminal justice process. This also needs to be preceded by the willingness of the Prosecutor to pay attention to the interests of the Victim,

- The principle of fast, simple and low cost justice (systematic resocialization of the offender)

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<sup>11</sup>M. Marwan and Jimmy. (2009). *Kamus Hukum*. Surabaya: Reality Publisher, p. 497

<sup>12</sup>Sahetapy. (1995). *Bunga Rampai Viktimisasi*. Jakarta, Pustaka Sinar Harapan, p.7.

This restitution/compensation can run as it should, it is necessary to apply the principle of fast, simple and low cost justice. Concretely, the principle of fast, simple and low-cost justice is intended so that the people involved in the judiciary are not treated and examined for a long time, then they can obtain procedural certainty about the existing law, the administrative process is light, and does not waste the resources available during the examination process.<sup>13</sup>

The connection with the existence is quick and simple so that it does not make them uncomfortable and feel burdened by the process of fulfilling the rights that should be given by the victim. The provisions in Government Regulation Number 43 of 2017 concerning the implementation of restitution for child victims make the rights of Child Victims through the LPSK as referred to in Article 6 facultative because they depend on the decision of the institution. Rights should be fundamental without being based on LPSK decisions. This is certainly contrary to the Criminal Procedure Code, especially in Article 98 which regulates the merging of criminal cases with compensation. In the Draft Law on the Elimination of Sexual Violence Article 49 concerning the decision on compensation, it is stated that through the demands of the prosecutor, the Judge then determines the decision regarding the type and amount of compensation. From this article, the rights to fulfill the protection of child victims, especially children as victims of sexual violence are achieved, namely obscene. The rules of the law regarding the juvenile justice system and the PP regarding the implementation of restitution for child victims should be adjusted to a progressive justice system in order to create a sense of justice.

The work of juvenile criminal justice in accordance with justice for child victims includes selected assessment responses from law enforcement starting from the police, LPSK and the Public Prosecutor as extended responses that will be submitted to the juvenile criminal justice process. Services are held following the availability of expertise, human resources and existing facilities. If you don't feel capable of serving because of limited manpower, facilities or funds, you usually look for other acquaintances and refer them there. The referral process is carried out on the basis of trust or good relations between several people among these institutions.<sup>14</sup>

The above perspective raises the importance of the accountability aspect for criminal justice and its implications for institutional control and responsibilities. This can be studied from the behavior of law enforcers, their decisions or events in the context of moral and legal accountability that reflect the functions of protection, protection, and justice from the criminal justice process, which of course can be emphasized and imbued in the laws and regulations. However, in the context of achieving the protection of Child Victims, what needs to be considered is substantial justice which pays attention to the values of humanism.

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<sup>13</sup>Marlina and Asmiati Zuliah. (2015). *Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang*. Bandung: PT Refika Aditama, p. 123

<sup>14</sup>Penny Naluria Utami, *Optimalisasi Pemenuhan Hak Korban Kekerasan Terhadap Perempuan Melalui Pusat Pelayanan Terpadu*. Jurnal Hak Asasi Manusia, Volume 7 No. 1, July 2016, p 6

Accommodating the fulfillment of compensation in granting the rights of child victims substantially has the consequence that the politics of criminal law aims at the concept of the systematic resocialization of the offender which seeks to protect crimes that include their rights as human beings, even though they have to pay for the crimes they have committed. The balance of the interests of the perpetrator and the victim in the context of protecting their human rights is the perspective of the work of the criminal justice system.

Progressively, to apply the concept of the systematic resocialization of the offender, it is necessary to emphasize the Draft Act No. 31 of 2014 concerning amendments to Act No. 13 of 2006 concerning the Protection of Witnesses and Victims by providing space in the Article regarding types of compensation which include: a) Money as compensation for material and immaterial losses; b) Recovery services needed by the Victim and/or Victim's Family; c) apologies to the Victim and/or the Victim's Family; and d) Restoration of the good name of the Victim and/or Victim's Family.

As a procedure for its implementation, it can adopt Article 48 of the Bill on the Elimination of Sexual Violence which is applied to Government Regulation Number 43 of 2017 concerning the implementation of restitution for children who are victims, namely regarding the Rights of Child Victims in their Prosecutor, the Public Prosecutor is required to submit Compensation in the letter of claim. And there is a Compensation Decision which in determining the decision on the type and amount of Compensation, the panel of judges is obliged to re-examine the type and amount of Compensation proposed by the public prosecutor.

Therefore, in this regulation, it is necessary to issue a Draft Law concerning the Protection of Child Victims and the implementation of restitution for children who are victims as a special criminal law which will later lead to a breakthrough in the criminal justice system with the aim that victims, especially children, can participate in the criminal justice process which is centered on efforts to fulfill the rights of victims and efforts to bring victims closer to justice. In addition to formulating the main criminal threats and additional penalties aimed at retributive as well as rehabilitative, the sentence imposed will be accompanied by a weighting if the victim is a child.

Considering the criminal act of sexual abuse for Child Victims who are in a condition of unequal power relations in justice with the perpetrators of crimes in the judicial process, especially if the Victim is only a Witness, the issuance of a Draft Law concerning the Protection of Child Victims and the implementation of restitution for children who become victims will build legal reform especially related to social defense, victim protection and recovery for victims of sexual abuse for any victim, including children. Lack of transparency in litigation institutions to non-litigation institutions. This can lead to a lack of input in the form of related aspects in the decision-making process. The legal decisions ultimately only refer to formal juridical considerations that do not pay attention to the dynamic context of the community and victims.

#### 4. Conclusion

The concept of the fulfillment of victim protection rights in the judicial process of child obscene crimes can be concluded progressively, namely first, Cross Examination which is the adoption of the Anglo Saxon system needs to be formulated in the Criminal Procedure Code. The purpose of this process is to obtain the fulfillment of the rights of the victim who pays more attention to the interests of the victim's child, namely through the prosecutor contained in the prosecutor's demands in the juvenile justice process to LPSK. Second, the principle of fast, simple and low-cost justice (systematic resocialization of the offender) is intended so that people involved in the judiciary are not treated and investigated for a long time. Bearing in mind that for all government apparatus, in dealing with cases where children are perpetrators and children are also victims, it should be necessary to establish a special procedural law product outside the general procedural law which regulates witnesses and evidence in accordance with the juvenile justice system which is separate from the general justice system because In essence, children are a very important generation for the sustainability of the state's future conditions, in this case the legal protection of children really needs to be maximized and complexities in all fields of law and other fields.

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