

## **Legal Protection for Child Victims of Sexual Violence at the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) in Cirebon City**

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**Abstract.** *The attention of the Indonesian state towards children and the handling of children's problems is indeed very clear. This can be seen in the constitutional basis as stated in the 1945 Constitution. Then other regulations were born as a form of concern for children. Among them; Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning child protection, which emphasizes the need for increased criminal sanctions and fines for perpetrators of crimes against children, especially sexual crimes, which aim to provide a deterrent effect, as well as encourage concrete steps to restore the physical, psychological and social health of children. To compensate for the suffering caused by sexual violence, the government has issued a policy for children who are victims of sexual violence as regulated in Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Criminal Acts. In addition, more specifically through the Regulation of the Minister of Women's Empowerment and Child Protection Number 1 of 2010 concerning Minimum Service Standards for Integrated Services for Women and Children Victims of Violence, which states that local governments are responsible for providing services and facilities for women and children who are victims of violence. As a manifestation of this regulation, each region has the authority and responsibility to provide facilities and services for victims of sexual violence. Sexual violence that occurs in Cirebon City, West Java is currently very horrific, according to the National Commission for Child Protection, Cirebon City is now in an emergency for sexual crimes against children. With the series and high number of sexual crimes in the Cirebon area, it is not an exaggeration if Cirebon is included in the category of emergency for sexual crimes against children after Bekasi and Tangerang.*

**Keywords:** *Child; Protection; Sexual; Victims.*

### **1. Introduction**

The attention of the Indonesian state towards children and the handling of children's problems is indeed very clear. This can be seen in the constitutional basis as stated in the

1945 Constitution. Then other regulations were born as a form of concern for children. Among them; Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning child protection, which emphasizes the need for increased criminal sanctions and fines for perpetrators of crimes against children, especially sexual crimes, which aim to provide a deterrent effect, as well as encourage concrete steps to restore the physical, psychological and social health of children.<sup>1</sup>

Viewing the annual records of the National Commission on Anti-Violence Against Women, who recorded cases of violence against women, in 2020 until March recorded violence against girls (KTAP) soared by 2,341 cases, the previous year there were 1,417 cases, an increase from last year reaching 65%.<sup>2</sup> To compensate for the suffering caused by sexual violence, the government has issued a policy for children who are victims of sexual violence as regulated in Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Criminal Acts.

In addition, more specifically through the Regulation of the Minister of Women's Empowerment and Child Protection Number 1 of 2010 concerning Minimum Service Standards for Integrated Services for Women and Children Victims of Violence, which states that local governments are responsible for providing services and facilities for women and children who are victims of violence. As a manifestation of this regulation, each region has the authority and responsibility to provide facilities and services for victims of sexual violence.<sup>3</sup> In its implementation, Cirebon City has provided this institution, namely the Integrated Service Center for the Empowerment of Women and Children or P2TP2A Cirebon City.<sup>4</sup>

Sexual violence that occurs in Cirebon City, West Java is currently very horrific, according to the National Commission for Child Protection, Cirebon City is now in an emergency for sexual crimes against children. With the series and high number of sexual crimes in the Cirebon area, it is not an exaggeration if Cirebon is included in the category of emergency for sexual crimes against children after Bekasi and Tangerang. An undeniable fact in the period January-June 2019, data on violence against children reported and collected by the data center and complaints of the National Commission for Child Protection, from 245 cases of violations against children in the Cirebon area, 52% were dominated by sexual crimes and the remaining 42% were cases of violations, exploitation, economic, kidnapping and trafficking of children and sexual crimes in other forms.<sup>5</sup>

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<sup>1</sup>[https://www.researchgate.net/publication/327507738\\_legal\\_protection\\_efforts\\_for\\_child\\_victims\\_of\\_sexual\\_violence](https://www.researchgate.net/publication/327507738_legal_protection_efforts_for_child_victims_of_sexual_violence) accessed Wednesday, April 1, 2020 15.00

<sup>2</sup>National Commission on Violence Against Women, Annual Report on Violence Against Women, Violence on the Rise: Policy on the Elimination of Sexual Violence to Build a Safe Space for Women and Girls, (Jakarta: National Commission on Violence Against Women, 2020), 14.

<sup>3</sup><https://www.kemenppa.go.id/index.php/page/glosary/21/p> accessed Wednesday, April 1, 2020 at 20.00

<sup>4</sup><https://www.kemenppa.go.id/index.php/page/view/58> accessed Thursday, April 2, 2020 at 07.00

<sup>5</sup><https://kicaunews.com/2019/09/10/komnas-perlindungan-anak-Cirebon-darurat-kekerasanterhadap-anak/>, accessed Wednesday, April 1, 2020 at 01.00

## 2. Research Methods

This study uses a qualitative approach related to debtor collection. This method is implemented by analyzing the implementation of restitution for child victims of sexual violence. This needs to be studied because of the importance of implementing restitution as an effort to restore child victims of sexual violence.<sup>6</sup>

## 3. Results and Discussion

### 3.1. Legal Protection for Child Victims of Sexual Violence at the Integrated Service Center for the Empowerment of Women and Children in Cirebon City

As explained in the introduction, victims of crime in the criminal justice system tend to be forgotten and given less attention (in the context of recognizing their basic rights). Attention to victims is not commensurate with the attention and recognition of the rights of perpetrators. In fact, in the context of law enforcement in a country that bases itself on the rule of law, the attention given by the state to perpetrators and victims of crime should be commensurate in accordance with the mandate of the constitution which states that every citizen is equal before the law.<sup>7</sup> Basically, the issue of the imbalance of rights between victims and perpetrators must be viewed fairly in the context of the realization of universal human rights protection covering both national and international scales.<sup>8</sup> In the perspective of national and international human rights, legal protection for victims is considered very urgent. Therefore, normatively, victims must be given protection rights in the form of legal protection or special protection. Experts have formulated arguments regarding the urgency of legal protection for victims. According to Black's Law Dictionary:

*Protection is (1) a. the act of protecting: defense; shelter from evil; preservation from loss, injury or annoyance; as we find protection under good laws and an upright administration; b. an instance of this; (2) one who or that which protects.*<sup>9</sup>

Legal protection is a matter or act to protect legal subjects based on applicable laws and regulations accompanied by sanctions if someone commits a breach of contract.<sup>10</sup> The

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<sup>6</sup>Johnny Ibrahim, Normative Legal Research Theory & Methodology, Bayumedia Publishing, Malang, 2013, p. 40.

<sup>7</sup>In accordance with the principle of equality before the law, as emphasized in Article 28 D paragraph 1 which reads: "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law"

<sup>8</sup>International provisions that provide guarantees for the rights of victims, including guarantees for the absence of discrimination, guarantees for equality before the law and guarantees for respect for human dignity as also guaranteed by the 1945 Constitution, for example: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

<sup>9</sup>Bryan A Graner. Black's Law Dictionary Eighth Edition. St. Paul. West Thomson, 2004. p. 1446

<sup>10</sup>Soedikno Mertokusumo, Understanding the Law (An Introduction), Liberty, Yogyakarta. 1997. p. 9

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definition of legal protection is the guarantee of human rights and obligations in order to fulfill one's own interests and in relations with other humans.<sup>11</sup>

Barda Nawawi Arief said that the meaning of protection for victims of criminal acts can be seen from two meanings, namely:<sup>12</sup>

- a. Can be seen as legal protection to avoid becoming a victim of a crime (meaning protection of human rights or a person's legal interests);<sup>13</sup>
- b. It can be interpreted as protection to obtain legal guarantees/compensation for the suffering/loss of people who have become victims of criminal acts (so it is identical to victim assistance). The form of compensation can be in the form of restoring a good name (rehabilitation), restoring inner balance (among others, with forgiveness), providing compensation (restitution, compensation, social welfare guarantees/compensation), and so on.

Mardjono Reksodiputro said that from a criminological approach, there are several reasons why crime victims need attention, namely:<sup>14</sup>

- 1) The criminal justice system is considered to pay too much attention to the problems and role of the perpetrator (offender-centered);
- 2) There is potential for information from crime victims to clarify and complement our interpretation of crime statistics (especially those from the police); this is done through victim surveys;
- 3) It is increasingly recognized that in addition to victims of conventional crime (street crime), it is no less important to pay attention to victims of non-conventional crime (including corporate crime and white collar crime) as well as victims of abuse of economic power and/or public power.

Passive legal protection is in the form of external actions (other than the judicial process) that provide recognition and guarantees in the form of regulations or policies related to the rights of the perpetrator and the victim. While active ones can be in the form of actions related to efforts to fulfill their rights. This active legal protection can be divided into active preventive and active repressive. Active preventive is in the form of rights granted by the perpetrator, which must be accepted by the victim in relation to the implementation of legal regulations or government policies. Active repressive is in the form of demands to the government or law

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<sup>11</sup>Auliya Hamida and Joko Setiyono, "Critical Analysis of Protection of Child Victims of Domestic Violence: Comparative Legal Study", Indonesian Legal Development Journal, Volume 4, Number 1, 2022, p. 73-74.

<sup>12</sup>Barda Nawawi Arief, Problems of Law Enforcement and Criminal Law Regulation in Combating Crime, Jakarta, Prenada Media Group, 2007, p. 61

<sup>13</sup>Muhammad Fachri Said, "Legal Protection for Children in the Perspective of Human Rights", Jurnal Cendekia Hukum, Vol. 4, No. 1, 2018, p. 149.

<sup>14</sup>Mardjono Reksodiputro, Human Rights in the Criminal Justice System: Third Book Collection, Center for Justice Services and Legal Service, University of Indonesia, 1994, p.102

enforcement officers regarding regulations or policies that have been applied to the victim that are considered detrimental.<sup>15</sup>

Protection can be divided into two types, namely legal protection and special protection against threats. Legal protection can be in the form of immunity given to reporters and witnesses so that they cannot be sued civilly or prosecuted civilly as long as the person concerned provides testimony or reports in good faith or the person concerned is not the perpetrator of the crime himself. Other legal protection is in the form of a prohibition for anyone to leak the name of the reporter or an obligation to keep the name of the reporter confidential accompanied by the threat of criminal penalties for violations. All witnesses, reporters and victims need this legal protection. Meanwhile, special protection for witnesses, reporters and victims is given by the state to overcome possible threats that endanger themselves, their lives and property, including their families. Not all witnesses, reporters and victims of criminal acts need this special protection, because not all of them face threats.<sup>16</sup>

The issue of protecting victims of crime is one of the issues that has attracted international attention. This can be seen from the discussion of the issue of protecting victims of crime in the 7th UN Congress in 1985 on "The Prevention of Crime and The Treatment of Offenders" in Milan, Italy: It was stated that "Victims' rights should be perceived as an integral aspect of the total criminal justice system." (Victims' rights should be an integral part of the entire criminal justice system). In this UN Congress, a draft Resolution on Victim Protection was submitted to the UN General Assembly. This draft Resolution later became UN General Assembly Resolution No. 40/34 dated 29 November 1985 on the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power."

For victims of child sexual crimes, it will leave feelings of shame, self-loathing and depression, so to overcome these feelings, they use excessive drugs and some even hurt their own bodies in order to express the pain they feel. As a result, it will cause mental disorders called "post-traumatic stress". In fact, there are rights for children as victims to receive medical assistance and psycho-social rehabilitation assistance. Psycho-social rehabilitation assistance is assistance provided by psychologists to victims who suffer from trauma or other mental problems to restore the victim's mental condition.

Victim protection can include abstract (indirect) and concrete (direct) forms of protection. Abstract protection is basically a form of protection that can only be enjoyed or felt emotionally (psychically), such as satisfaction (satisfaction). Concrete protection is basically a form of protection that can be enjoyed in real terms, such as the provision of material or non-material. Protection for victims in the criminal justice system was initially stated in the Criminal Procedure Code, namely Articles 98 to 101 of the Criminal Procedure Code. However, in the Criminal Procedure Code it is only limited to the consolidation of cases. The point is that in its development, the Criminal Procedure Code is less able to provide protection for victims as a whole, even though the existence of witnesses and/or victims of a crime in this

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<sup>15</sup>Philip M. Hadjon Legal Protection for the People, Dissertation, Airlangga University, Surabaya, 1987, p. 23

<sup>16</sup> Alvianto RV Ransun. Mechanism of Compensation and Restitution for Victims of Criminal Acts. Lex Crimen Vol.1/No.1/Jan-Mrt/2012. Sam Ratulangi University, Manado, 2012, p.63.



case is very necessary and is also something that must be considered as a whole in the examination process in criminal justice.

In principle, the protection of a person's rights as a witness has been accommodated in the Criminal Procedure Code, but considering the increasingly diverse types of criminal acts and the effects or consequences for the safety of the lives of witnesses/victims or their families, in 2006 the Indonesian government issued Law Number 13 of 2006 concerning Protection of Witnesses and Victims. In Law Number 13 of 2006 concerning Protection of Witnesses and Victims, various rights granted by the State to victims of a criminal act have been regulated which were previously not or were not regulated in the Criminal Procedure Code.

The basis for considering the need for a law regulating the protection of crime victims (witnesses) to be clearly formulated can be seen in the considerations section of this law, which among other things states: law enforcers often have difficulty in seeking and finding clarity about the criminal acts committed by the perpetrator because they cannot present witnesses and/or victims due to threats, both physical and psychological, from certain parties. Whereas we know that the role of witnesses or victims in a criminal justice process occupies a key position in efforts to seek and find clarity about the criminal acts committed by the perpetrator.

The existence of a witness and victim before 2006 was something that was not taken into account. In the Criminal Procedure Code itself, as a form of *Hir/Rbg*, there is a tendency to protect the rights of citizens who have the status of suspect, defendant, and convict.<sup>17</sup> But we often forget that the process of proof requires witness or victim witness (victim who testifies). The existence of both is often ignored by law enforcement and law enforcement officers in Indonesia. Safety, both themselves and their families in certain cases are at stake, for their testimony.

Forms of protection and rights of witnesses and victims are given since the beginning of the investigation stage and end in accordance with the provisions of the laws and regulations. In fact, if in giving testimony in front of the court, because his presence will make his life threatened, the law in this case will provide protection for witnesses or victims or family members by giving testimony without the presence of the perpetrator in the examination before the court.

However, it is not uncommon for someone who experiences losses both materially and immaterially due to a criminal act that has befallen him, not to use the rights that should be obtained for various reasons, for example in sexual crimes. Someone who is a victim of a sexual crime will have a feeling of fear in the future if the community finds out about the incident that befell him, because a sexual crime is a disgrace to him and his family so that the victim is better off hiding it or the victim refuses to file for compensation because it is feared

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<sup>17</sup>Rocky Marbun. *Smart and Tactical in Facing Legal Cases*. (Jakarta: Visi Media, 2010, page 86.

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that the process will become longer and more protracted which can result in prolonged suffering.<sup>18</sup>

In its development, guarantees of protection for witnesses and victims have a very important role in the criminal justice process so that with statements from witnesses and victims that are given freely from fear and also free from threats, a criminal act can be revealed, which then increases efforts to fully reveal a criminal act, especially in transnational crimes that have been organized, it is also necessary to provide protection to witnesses, perpetrators, reporters, and also experts. Several provisions in Law Number 13 of 2006 concerning Protection of Witnesses and Victims must be adjusted to the development of legal needs in society. That is why the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims was enacted.

Furthermore, in addition to the Criminal Procedure Code and Law Number 31 of 2014, regarding child victims of crime, the handling of children as victims is generally regulated in Law Number 11 of 2002 concerning the Child Criminal Justice System (UU SPA). Providing protection to children as victims of crime is one of the objectives of the child criminal justice system.<sup>19</sup> In Law Number 11 of 2012 concerning SPA, children as victims of criminal acts are referred to as Child Victims.<sup>20</sup> Then the implementation of restitution in 2020 is regulated by Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.

Article 1 number (5) of Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims states that "restitution is compensation given to the Victim or his/her Family by the perpetrator or a third party". However, the amount of restitution and the parties authorized to regulate the implementation of restitution are not clearly stated in Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.

Sociologically, legal protection for victims is also interpreted as an effort by the state to create a harmonious relationship of trust towards its citizens by realizing a guarantee of service in the form of fair law enforcement so that its citizens do not make threats or take the law into their own hands. As in the concept of social contract theory,<sup>21</sup> The state is given the right to

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<sup>18</sup> Didik M Arif Mansur and Elistaris Gultom, op.cit., p. 52.

<sup>19</sup> Yulia, Rena. Victimology of legal protection for victims of crime. Yogyakarta: Graha Ilmu, 2010, p.62.

<sup>20</sup> Article 1 number 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

<sup>21</sup> Jean Jacques Rousseau is the initiator of the social contract theory, in Rousseau's teachings on society and the state there is a conflict. On the one hand, the freedom of each individual is emphasized, on the other hand, the power of the state is emphasized. This last thing happens, because according to Rousseau, it is in the state that the general will (*volonte generale*) is realized, namely the will of the people themselves which must not be

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manage and regulate its citizens based on a contract of free will delegation from its citizens with the requirement that the state can provide protection guarantees for its citizens. Thus, if the state violates the contract of protection services, then of course the mandate of the citizens will be distorted by itself. So it is not surprising if then its citizens become disappointed and no longer respect the state.<sup>22</sup>

In addition, functionally, legal protection for victims must also be interpreted as a major part of crime prevention and handling regulations. It is impossible to carry out crime prevention and handling appropriately, if we do not pay attention to the problems of victims appropriately. Because crime is basically the result of a relationship<sup>23</sup> between the phenomenon of the perpetrators of crime on one side and the victims of crime on the other side. Thus, if the victim does not get proper treatment from the state, then of course there will be apathy and cynicism towards the legal and judicial system, which then by virtue of *conditio sine qua non* will cause crime to be difficult to overcome. Often the disclosure of crimes is due to reports from victims to law enforcement officers. So if the victim is no longer given protection by law, then the victim is not enthusiastic about reporting to law enforcement, then of course efforts to prevent and overcome crime will be hampered. Therefore, legal protection for victims is very urgent for efforts to prevent and overcome crime.

Protection for victims of crime, theoretically there are two regulatory models, namely: (1) the procedural rights model and the services model.<sup>24</sup>

- a. Procedural rights model; victims are given the right to play an active role in the criminal case resolution process, such as the right to file criminal charges, assist the prosecutor or the right to be heard at every level of the case examination where their interests are involved, including the right to be consulted before being granted conditional release, as well as the right to make peace.
- b. Service model: Standard standards for the guidance of crime victims, which can be used by the police, for example guidelines for modifications to victims and/or prosecutors in handling their cases, providing compensation as a restitutive criminal sanction and the impact of victim statements before the sentence is imposed. Victims are seen as special targets who must be served in law enforcement activities or the resolution of criminal cases.

If the Child as a Victim requires immediate assistance, the Investigator, without a social report from a Professional Social Worker, can directly refer the Child as a Victim to a hospital or institution that handles matters relating to child protection according to the condition of the

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violated. In the name of the general will, individual rights are sacrificed. See in Theo Huijbers, *Philosophy of Law in the Trajectory of History*, Yogyakarta, Kanisius, 1992, p. 9

<sup>22</sup>Tegar Sukma Wahyudi and Toto Kushartono, "Legal Protection of the Rights of Children Who Are Victims of Domestic Violence in Connection with Law Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 Concerning Child Protection", *Journal of Legal Dialectics*, Vol. 2, No. 1, 2020, p. 58-59.

<sup>23</sup>Arif Gosita, *Op Cit*, p.98

<sup>24</sup>Muladi, *Human Rights, Politics and the Criminal Justice System*, Semarang, BP Undip, 1997, p. 178.



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Child as a Victim.<sup>25</sup> What is meant by "requiring immediate medical attention" is a condition where the child is suffering, either physically or psychologically, to the point where it must be treated immediately.<sup>26</sup>

Children as Victims and/or Children as Witnesses in Need protection to obtain protection from institutions that handle witness and victim protection or social protection houses in accordance with the provisions of laws and regulations.<sup>27</sup> When examining a Child as a Victim and/or a Child as a Witness, the Judge may order the Child to be taken out of the courtroom.<sup>28</sup> Children as Victims and/or Children as Witnesses have the right to all protection and rights regulated in statutory regulations.<sup>29</sup>

### **3.2. Effectiveness of Legal Protection Provided by P2YP2A for Child Victims of Sexual Violence**

The achievement of the P2TP2A's objectives in handling acts of violence against women and children is the fulfillment of all services, assistance and protection for victims of acts of violence. The quality of services carried out by the Cirebon City P2TP2A is seen from direct evidence, reliability, response or responsiveness and empathy. The role carried out by the Cirebon City Social Service after receiving a referral is to provide assistance carried out by social workers. The police receive reports, either directly or referrals from other institutions, such as the Social Service, Health Service, Education Service, P2TP2A, NGOs, or the community. The report is made into an Examination Report (BAP). The police then refer victims of violence to the hospital for a post-mortem. The results of this post-mortem are the basis for the police to summon and ask for information from the perpetrator which is then transferred to the prosecutor's office. In addition to the hospital, the police also make referrals for victims to the Social Service to get assistance from social workers. The role of the Cirebon City Integrated Service Center for the Empowerment of Women and Children is as a companion for child victims of violence to obtain justice. The roles carried out by each institution related to handling violence against children are not without obstacles. There are many obstacles faced in handling violence against children in Cirebon City. Psychological handling is very important because it will affect the ability of children who are victims of violence to live their lives later. In addition, there are no psychologists who are specifically tasked with handling children who are victims of violence. Meanwhile, the quality of human resources in handling children who are victims of violence in Cirebon City is still limited. Understanding of policies also still needs attention. Understanding of policies is still carried out sectorally. Understanding of policies is carried out partially so that handling is also more sectoral. Services provided by P2TP2A Cirebon City include complaint services; health

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<sup>25</sup> Article 91 paragraph (2) of Law Number 11 of 2012 concerning SPA.

<sup>26</sup> Article 91 paragraph (2) of Law Number 11 of 2012 concerning SPA.

<sup>27</sup> Article 91 paragraph (4) of Law Number 11 of 2012 concerning SPA.

<sup>28</sup> Article 58 paragraph (1) of Law Number 11 of 2012 concerning SPA.

<sup>29</sup> Article 89 of Law Number 11 of 2012 concerning SPA.

services; social rehabilitation services; law enforcement services; and social reintegration services.<sup>30</sup>

The results of the study showed that coordination between institutions was not optimal. Coordination between institutions is important so that the handling provided can be comprehensive. The Social Service, P2TP2A, Education Service and Police still lack coordination. Likewise, the Cirebon City NGOs in this coordination are still not optimal when viewed from the data on violence that occurred in Cirebon City. The data is not the same and tends to only be data received by each institution. The accuracy of the data can actually be utilized by each institution in handling child victims of violence. This is related to the facilities that must be provided while currently the facilities and infrastructure are still lacking such as special rooms for mediation and other facilities, as well as human resources that must be involved. It also often happens that cases of violence against children are resolved by each institution without involving other institutions. If traced, the involvement of other institutions is needed so that violence against children can be minimized. Each institution cannot handle child victims of violence alone, because it requires competence from other institutions. This coordination is actually very possible, because in Cirebon City there is already a policy that has been outlined. The involvement between one field and another in carrying out their roles and responsibilities by each staff/employee at the Integrated Service Center for the Empowerment of Women and Children (P2TP2A), especially in handling acts of violence against women and children, has been going well. However, the coordination process is only carried out via WhatsApp and telephone. In addition, the Coordination Meeting is only held twice a year. Then the employee response to overcome environmental incompatibility is still lacking because there are several OPDs or management teams of the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) related to prioritizing sectoral egos in carrying out their roles and duties. The problem of poor coordination between the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) of Cirebon City with several related institutions and the lack of professionalism of the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) employees in serving the community are the main obstacles to the suboptimal role of the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) of Cirebon City in providing protection services for children who are victims of sexual violence. Various existing obstacles have resulted in the role of the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) and the PA Polresta Cirebon being less than optimal, with the fact that out of 86 cases of sexual violence, only 4 cases were handled to the court level.<sup>31</sup>

The next obstacle is the obstacle related to the role of society. The life of society in its development always requires an orderly and regular state, an orderly and regular state in society can be realized if there is one order in a society. The order in society is not the same, this is because an order consists of various different norms. These differences can be observed in the relationship between *das sollen* and *das sein* or between legal ideals and laws in their implementation in society. Gustav Radbruch called this "ein immer zunehmende Spannungsgrad zwischen ideal und Wirklichkeit." Radbruch's opinion can be interpreted that

<sup>30</sup>Interview with Raya Siti Nuryani as Chair of the Cirebon City Child Protection Commission, May 14, 2025.

<sup>31</sup>*Location, cit.*

every difference in the existing order and norms can be seen from the different contents in legal ideals and laws in their implementation in society.<sup>32</sup>

Furthermore, Satjipto Rahardjo stated that in an order that can be seen from the outside, there is basically a complex order in it, or it can also be said that in an order there are sub-orders that make up the order. The complex sub-orders consist of:<sup>33</sup>

a) Habit

Customary order or customary rules can be said to be the order or rules that are closest to the life of society. It can also be said that customary order or customary rules come from the struggle that is always carried out by society through filters in the form of order, stipulations and the willingness of society to accept the habit as an order or rule.

This shows that this rule has a content that depends on the dynamics of society so that the level of justice between *das sollen* and *das sein* is very low, this is because society is very dynamic while an ideal is sometimes firm and less flexible or not in line with changes in society so that the level of justice between *das sollen* and *das sein* is very low. In this rule, humans who can be said to be ideal humans are humans who always act in accordance with the norms and rules or orders that apply in society. However, the norms in the customary order are not the same as the norms in the legal and moral order.

b) Law

Furthermore, the legal order is an order or rule that is very close to the shifting event between *das sollen* and *das sein* in society. However, the release between a rule from the customary rule which is the basic rule, through the legal rule cannot be separated completely, this is indicated by the existence of customary law and customary law in society that still adheres to the customs of society which are *das sollen* in society.

The shift between customary rules and other rules can be seen in the positive law of the state which is made by an institution appointed by the community and indeed assigned by the community to create a legal rule. In this process, it is clear that norms and rules are deliberately made to create order in society.

Meanwhile, the order in question is also a complex sub-rule in society that is determined by its members through certain working mechanisms. The members of society basically form an official institution that is appointed by society as a whole in order to form a norm as a basis for the formation of a rule or order in society.

So it is clear that both norms and rules or orders are formed based on human will. So it is clear that human will is the basic foundation and characteristic of the legal order. This is because with the existing human will, it is able to independently determine the position of legal rules independently, not depending on moral rules and customary rules, this is because human will is able to independently form its own norms and rules.<sup>34</sup>

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<sup>32</sup>Satjipto Rahardjo, *Legal Science*, Citra Aditya Bakti, Bandung, 2012, p. 13-14.

<sup>33</sup>*Ibid*, p. 14-18.

<sup>34</sup>*Location, cit.*

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Furthermore, various problems that arise as a result of the unfairness of the criminal justice system for victims of sexual violence have found a bright spot, namely the implementation of restitution.<sup>35</sup> is an alternative in an effort to protect and restore the rights of victims who have been injured due to the crime of sexual violence. Regarding restitution in its development has been clearly regulated in the United Nations Declaration on The Prosecution and Assistance of Crime Victims in point 4 part 1 General Principles. The United Nations declaration states that:<sup>36</sup>

*Reparation by the offender to the victim shall be an objective of the justice process. Such reparations may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury psychological trauma, (3) payment for suffering, and (4) service to the victim. Reparation should be encouraged by the corrective process.*

Meanwhile, regarding the regulation of restitution in national legal regulations is clearly regulated in Law Number 31 of 2014. Article 1 number 11 of Law Number 31 of 2014 states that "restitution is compensation given to the victim or his/her family by the perpetrator or a third party." Furthermore, Article 7A number 1 of Law Number 31 of 2014 states that:

Victims of criminal acts have the right to receive restitution in the form of:

- (a) compensation for loss of wealth or income;
- (b) compensation for losses incurred as a result of suffering directly related to the criminal act; and/or
- (c) reimbursement of medical and/or psychological care costs.

Furthermore, Article 3 of the Republic of Indonesia Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Criminal Acts states that:

Restitution for children who are victims of crime in the form of:

- (a) compensation for loss of property;
- (b) compensation for suffering as a result of a criminal act; and/or
- (c) reimbursement of medical and/or psychological care costs.

In its development, the implementation of restitution for the recovery of child victims of sexual violence has not been effective in 2017. This is because Article 7 of Government Regulation of the Republic of Indonesia Number 43 of 2017 still contains administrative requirements that still make it difficult for victims, so that the authorities should be able to

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<sup>35</sup>Restitution is the restoration of the rights of victims of a criminal act in society. Galeway stated that the purpose of restitution is to restore the losses suffered by the victim due to a criminal act, namely by providing appropriate sanctions to the convict and preventing retaliation against the victim. In Indonesia, the restitution system adopted is a procedural rights approach system, this is clearly seen in Law Number 31 of 2016 and Government Regulation Number 44 of 2008. The weakness of this restitution system is that the legal rights of the victim are difficult to determine due to the unclear separation between the victim's personal interests and the public interest, and the next weakness is that the restitution system adopted in Indonesia tends to be easy to abuse. See: Ahmad Sofyan, Granting Restitution to Victims of Criminal Acts in the Indonesian Criminal Justice System, Accessed Through [business-law.binus.ac.id](http://business-law.binus.ac.id), On May 12, 2018.

<sup>36</sup>Romli Atmasmita, Writing a Scientific Paper on the Problem of Compensation for Victims of Criminal Acts, National Legal Development Agency, Department of Justice, Jakarta, 1992, p. 4.

facilitate the fulfillment of administrative requirements as regulated in Article 7 of Government Regulation of the Republic of Indonesia Number 43 of 2017. In addition, perpetrators of criminal acts are reluctant to pay restitution on the grounds of economic inability, this becomes even more unfair because the inability of the perpetrator to pay restitution is only replaced with a subsidiary sentence in the form of imprisonment for 2 to 3 months. In addition, the time for receiving restitution by child victims of sexual violence is also quite long considering the long trial process, not to mention the perpetrators who are in detention or sentenced to death which can then be a reason not to carry out restitution.

Then in 2018 the government issued Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. However, in its development, the implementation of compensation as an alternative to restitution is also not easy, this is because there is no institution appointed in the Government Regulation to interpret the amount of losses suffered by victims, in addition, it has not been clearly regulated which state institution is authorized to distribute compensation from the state to child victims of sexual violence. In addition, the administrative requirements for submitting a compensation application by the victim are so complicated that it will also be a problem for the victim.

Furthermore, when talking about the crime of sexual violence against children, then in the case of a trial in court, of course, the Criminal Procedure Code is used, which does not clearly contain compensation for child victims of the crime. Law Number 35 of 2014 also does not specifically contain restitution and compensation for child victims of crimes including the crime of sexual violence. It has been explained previously that the consequences of the problem of sexual violence against children, including acts of sexual violence, can result in physical and psychological losses. Until now, it cannot be said that compensation and restitution can restore the psychological losses of child victims of sexual violence.<sup>37</sup>

This is because psychological violence can cause short-term and long-term impacts. Short-term impacts include the threat to the child's safety, damage to the family structure, and mental and psychological disorders. While the long-term impact is the involvement of children in adulthood as perpetrators of violence. Trauma and the experience of being a victim of violence cause children to become perpetrators of violence in adulthood. This can be seen from the symptoms of aggression, phobia, insomnia, low self-esteem, and depression. These various things cause children to be involved in violence in intimate relationships in adulthood.<sup>38</sup>

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<sup>37</sup>Wakhid Rendy Saputro and Ira Alia Maerani, "Legal Protection for Child Victims of Sexual Violence at the Semarang Police", Proceedings of the UNISSULA STUDENT SCIENTIFIC CONSTELLATION (KIMU) 5 Sultan Agung Islamic University Semarang, March 23, 2021, p. 286-289.

<sup>38</sup>Maria Advianti, KPAI: Perpetrators of Violence Against Children Increase Every Year, Accessed Through [www.KPAI.go.id](http://www.KPAI.go.id), On May 12, 2018. See also: Margaretha, Rahmaniar Nuringtyas, and Rani Rachim, *Childhood Trauma and Violence in Intimate Relationships*, Makara Social Humaniora Series, 2013, p. 34.



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Then the next alternative is imprisonment for perpetrators of sexual violence, which is basically still full of various problems.<sup>39</sup> One of them is the problem of interaction between criminals in prison that produces criminals with new skills through the process of social interaction in prison cells. Erwin H. Sutherland and D. Cressey stated that crime is an action learned through the process of interaction.<sup>40</sup>

This clearly makes many perpetrators of sexual violence against children, including child sexual violence, not effectively deterred and transformed into good people, considering that these conditions are also exacerbated by the problems of poverty and low education. In addition, the paradigm of imprisoning perpetrators of child sexual violence certainly results in other problems, the other problem is the problem of the capacity of the LAPAS (Correctional Institutions) which are increasingly unrepresentative. It was recorded that in January 2018 the number of prisoners reached 233,662 people while the capacity of the LAPAS in Indonesia only reached 123,117 people.<sup>41</sup>

This can clearly have an impact on conflicts in prisons that culminate in various issues of control of prisons by inmates who feel ignored by the government. So it can be said that until now there has been no criminal method that is truly effective in creating a deterrent effect for perpetrators of sexual violence. Therefore, the right punishment is through victim recovery, both through restitution and compensation, as well as victim psychological recovery, which until now has received less attention due to the criminal law paradigm that places victims more as witnesses, reporters, and instruments in sentencing perpetrators.

Based on the , it can be seen that in the case of protection of victims of sexual violence, legal certainty has existed, meaning there is no legal vacuum, however, there is still a problem of legal justice in the case. So it is clear that *spannungsverhältnis* often occurs between the value of legal certainty and the value of legal justice.

Based on the various s above, it is clearly seen that in terms of protection and restoration of the conditions and rights of child victims of sexual violence, it is not enough to only be viewed normatively by emphasizing the aspect of legal regulations as the main basis for answering the question of the effectiveness of protection and restoration of the conditions and rights of child victims of sexual violence. This also needs to be seen from the perspective of legal culture. Lawrence M. Friedman stated that "in discussing the law, it is not appropriate to only talk about the substance and structure of the law, but must also look at the legal culture".<sup>42</sup>

In its development, legal culture is also important to discuss in every legal discussion because legal culture is a pattern that shows how legal regulations are implemented in society where

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<sup>39</sup>Jen Merlin Tukly, Hadibah Zachra Wadjo and Iqbal Taufik, "Legal Protection for Children as Victims of Violence", *Pattimura Law Study Review*, Volume 1, Number 1, 2023, p. 214.

<sup>40</sup>Ahmad Usman, Prison = Place of "Repentance" or Rather "School of Crime", Accessed via inipasti.com, on May 12, 2018.

<sup>41</sup>Era.id, Causes of Conflict in Prisons, Capacity and Competition for Facilities, Accessed on May 12, 2018.

<sup>42</sup>Lawrence M Friedman, *The Legal System, A Social Science Perspective*, Russell Sage Foundation, New York, 1975, p. 6-9.

it is influenced by knowledge, traditions, customs and agreements of a society. Seeing this view, it is clear that the implementation of law cannot be isolated from the development of community life. Community culture in the development of law also colors and degrades the concept and system of legal implementation.<sup>43</sup>

In line with this view as explained above, Chambliss and Seidman stated that any action taken by role holders, implementing institutions or law makers is always within the scope of the complexity of social, cultural, economic and political forces and so on.<sup>44</sup>

#### 4. Conclusion

The procedure for implementing the protection of child victims of violence by the Integrated Service Center for Women's Empowerment and Child Protection of Cirebon City is carried out by providing victim rights in the form of victims receiving services according to their needs, such as legal consultations including providing information about victim rights and legal procedures that can be taken. Legal assistance by officers will accompany victims in the legal process, such as reporting cases to the police or filing lawsuits. Psychological consultation: Victims will receive consultation from a psychologist or psychiatrist to help the recovery process. Advocacy in the form of P2TP2A will help victims gain access to various services needed, such as health services, education, or housing. The effectiveness of the role of the Integrated Service Center for Women's Empowerment and Child Protection in Cirebon City has not been running effectively due to obstacles in the form of poor coordination between the Integrated Service Center for Women's Empowerment and Child Protection with other related institutions and the lack of professionalism of the Integrated Service Center for Women's Empowerment and Child Protection employees in providing services to the community and the lack of public understanding of the role of the Integrated Service Center for Women's Empowerment and Child Protection.

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<sup>43</sup>Ni Made Darmakanti, Ni Putu Rai Yulianti and Dewa Gede Sudika Mangku, "Implementation of Legal Protection for Child Victims of Sexual Violence in Singaraja City", *Yustisia*, Volume 5, Number 2, 2022, p. 2.

<sup>44</sup>Herli Antoni, Asmak Ul Hosnah and Angelica Clara Anasztasia Simanjuntak, "Legal Protection for Victims of Sexual Violence against Children Based on Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence", *Logika*, Vol. 15, No. 2, 2024, p. 235.

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In accordance with the principle of equality before the law, as emphasized in Article 28 D paragraph 1 which reads: "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law"

International provisions that provide guarantees for the rights of victims, including guarantees for the absence of discrimination, guarantees for equality before the law and guarantees for respect for human dignity as also guaranteed by the 1945 Constitution, for example: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Jean Jacques Rousseau is the initiator of the social contract theory, in Rousseau's teachings on society and the state there is a conflict. On the one hand, the freedom of each individual is emphasized, on the other hand, the power of the state is emphasized. This last thing happens, because according to Rousseau, it is in the state that the general will

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(volonte generale) is realized, namely the will of the people themselves which must not be violated. In the name of the general will, individual rights are sacrificed. See in Theo Huijbers, *Philosophy of Law in the Trajectory of History*, Yogyakarta, Kanisius, 1992,

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Article 91 paragraph (4) of Law Number 11 of 2012 concerning SPA.

### **Interview:**

Interview with Raya Siti Nuryani as Chair of the Cirebon City Child Protection Commission, May 14, 2025.