

## Implementation of Legal Protection for Child Victims Against Justice-Based Sexual Violence Crimes (Decision Study: Number 396/Pid.Sus/2023/PN Mtr)

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**Abstract.** *The purpose of this study is to determine the implementation of legal protection for child victims against sexual violence crimes and to analyze the ideal regulation of legal protection for child victims against sexual violence crimes based on justice. The approach method used in compiling the thesis is sociological legal research. Implementation of legal protection for child victims against sexual violence crimes in the verdict: Number 396 / Pid.Sus / 2023 / PN Mtr, where Defendant A was sentenced to 15 (fifteen) years in prison, and a fine of one billion rupiah, subsidiary to 6 (six) months in prison. In the verdict, the judge did not impose a restitution sentence but a fine, of course this is unfair to the victim. the implementation of restitution to child victims of sexual violence is problematic if the perpetrator comes from a disadvantaged background. When the perpetrator is unable to pay compensation, various obstacles arise in the process of fulfilling the victim's rights. As a result, the victim cannot receive the compensation stipulated. In this case, the state needs to be present to ensure that the victim's rights are protected. This can be done by establishing a special fund provided by the government or state institutions to provide compensation to victims of sexual violence. The fund can be used to cover costs that the perpetrator cannot afford, so that the victim still receives restitution in accordance with the court's decision.*

**Keywords:** Children; Legal; Protection; Sexual; Violence.

### 1. Introduction

In the 1945 Constitution of the Republic of Indonesia or abbreviated as UUDNRI 1945, Article 1 explains that the Republic of Indonesia is a unitary state in the form

of a republic whose sovereignty lies in the hands of the people and is implemented according to the Constitution which is a state based on law.<sup>1</sup>

Nowadays, Indonesian society is experiencing extraordinary moral decadence, especially in terms of morality. In recent decades, Indonesia has had many problems regarding these crimes, both through news reports on television, print media and radio. The most concerning is the large number of sexual exploitation of children that occurs in Indonesia due to the weak legal protection for victims of acts, in this case victims of sexual violence, namely molestation.<sup>2</sup>

In relation to the principle of the best interests of the child, Article 3 paragraph (1) of the Convention on the Rights of the Child states that in all actions concerning children carried out by governmental or private social welfare institutions, judicial institutions, government institutions or legislative bodies, the best interests of the child must be the primary consideration. This is because a child does not yet have physical and mental maturity, so that he needs special protection and care, including appropriate legal protection, before and after birth.<sup>3</sup>

Child protection regulations have been expressly regulated in Law 17 of 2016 concerning Child Protection, furthermore in Article 2 of the Child Protection Law it is explained that child protection maintains and protects the dignity of children to avoid violence and discrimination so that children are able to participate well in society accompanied by protection of the rights of these children.<sup>4</sup>

According to Romli Atmasasmita, there are many negative influences on children given by parents so that children become unsafe in society, this is what causes children to become victims of discrimination.<sup>5</sup> Not a few children are trapped in worrying conditions due to the inability of parents to direct and accompany the child's growth process, therefore the positive influence of parents has a great influence on the child's development process itself.

Children who are in conflict with the law as victims receive their rights as regulated in the Child Protection Law, including: First, receiving education related to the importance of reproductive health, as well as religious and moral education. Second, receiving a social rehabilitation program so that children who are victims of sexual crimes can return to society without stigma. Third, victims receive

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<sup>1</sup>Muhlashin, Legal State, Democracy and Law Enforcement in Indonesia. *Al-Qadau Journal: Islamic Family Law and Justice*, 8(1), 2021, pp. 87-100.

<sup>2</sup>Robinson, Geoffrey B. *The Killing Season A History of the Indonesian Massacres, 1965-66*. e-book. Princeton: Princeton University Press. 2018.

<sup>3</sup>Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law

<sup>4</sup>Fitriani, Rini. 2016. "The Role of Child Protection Organizers in Protecting and Fulfilling Children's Rights." *Samudra Keadilan Law Journal* 2(2): page. 250–58.

<sup>5</sup>Atmasasmita, Romli. *Problems of Juvenile Delinquency*, Bandung: Armico, 1986, p. 17

psychological assistance and treatment until the victim recovers and their trauma is gone, and they can return to their normal activities. Fourth, receiving protection and legal assistance from all levels of examination, both in the police, prosecutor's office and court.<sup>6</sup>

In fact, according to LBH Apik, several victims of sexual violence who were assisted by him did not receive protection from the state in the process of resolving the case. The state is still busy creating a deterrent effect on the perpetrators without considering the victim's side, even though victims of sexual violence experience physical, psychological and financial trauma. Victims of sexual violence must pay their own costs when a post-mortem examination is required in the reporting process, not only that, to treat their trauma, victims must also have their own counseling with a psychologist where both the post-mortem and counseling costs are borne by the victims of sexual violence, especially the victims, even to get legal assistance, it is difficult for victims from the state.<sup>7</sup>

It is ironic to know that the existence of regulations regarding the protection of child victims of sexual violence is still not able to comprehensively become a legal basis and to protect victims of sexual violence, especially girls who are increasingly diverse and professional, even regarding protection for victims of this molestation. The many negative impacts of sexual violence greatly affect the development of children until they are adults, moreover, sexual violence will not just disappear, the pain and trauma when they become victims of sexual crimes including victims of molestation. The modus operandi of sexual crimes has been carried out in various ways and the perpetrators are not strangers, but people closest to the victim, the methods used range from gentle methods to rough methods until the victim dies, all of which are forcing them to have intercourse with the child.<sup>8</sup>

The National Commission on Violence Against Women continues to monitor the case of sexual violence against 13 female students at an Islamic boarding school in Bandung with the perpetrator HW, a teacher at the Islamic boarding school, which has been in the public spotlight since the case was broadcast on various mass media in Indonesia in 2021. The case of sexual violence against 13 female students is part of the iceberg phenomenon related to sexual violence in religious-based educational institutions and boarding schools. The National Commission on Violence Against Women appreciates the Bandung Court's decision regarding the right to recovery, restitution and the rights of victims to give consent for the care and upbringing of children. The appeal judge corrected that restitution is the right of the victims and it is the obligation of the perpetrator to restore the impact of

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<sup>6</sup>Aprilianda, Nurini. 2017, Protection of Child Victims of Sexual Violence Through a Restorative Justice Approach. *Legal Arena*, 10 (2): p. 309–32.

<sup>7</sup>2021. <https://mediaindonesia.com/humaniora/374992/Lbh-ApikJakarta-Nilai-Penegakan-Hukum-Belum-Maksimal> accessed on June 10, 2024

<sup>8</sup>Hadibah Zachra Wadjo and Judy Marria Saimima. 2020, Legal Protection for Victims of Sexual Violence in the Framework of Realizing Restorative Justice." *Belo Journal* 6 (1): p. 48–59.

sexual violence experienced by the victims, with costs sourced from the perpetrator's wealth and not the state. By correcting it as the victim's right and not an additional criminal penalty, the maximum sentence can be determined as the fulfillment of the obligation to pay restitution. Likewise, for the care and upbringing of children, making the consent of the victim and her family a prerequisite before children born from rape/sexual violence are cared for by the state. Restitution will be used to cover the living costs of the victim's children and education costs until they are adults. This decision is in line with the mandate of the Sexual Violence Crime Law (TPKS) regarding recovery and restitution and contributes to the formulation of restitution in the TPKS Law which was passed on April 12, 2022.<sup>9</sup>

## 2. Research methods

The research approach uses a socio-legal research method,<sup>10</sup> because the problem being studied concerns the relationship between legal factors and sociological factors.<sup>11</sup> The sociological legal approach is a legal research approach that is based on the legal rules that apply in society and is carried out by observation, interviews or distributing questionnaires. Sociological legal research is called field legal research, because this research is carried out by observation, interviews or distributing questionnaires. As a field research because this research is more often carried out on primary data.<sup>12</sup>

## 3. Results and Discussion

### 3.1. Implementation of Legal Protection for Child Victims of Sexual Violence

Legal Protection is an element that is very important, namely to regulate its citizens who are victims of criminal acts. In the 1945 Constitution Article 1 Paragraph 3 which reads: Indonesia is a country of law. This means that Indonesia is a country based on law. Legal protection itself becomes an essential element and a consequence in a country of law and the state is obliged to guarantee the legal rights of its citizens. Legal Protection is meant as a legal effort that must be given by law enforcement officers to provide a sense of security, both mentally and physically, from disturbances and various threats from any party.<sup>13</sup>

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<sup>9</sup>Press Release from the National Commission on Violence Against Women, Regarding the Case of Sexual Violence Against 13 Female Students and the Death Penalty for the Perpetrators <https://komnasperempuan.go.id/siaran-pers-detail/tangan-kas-kekerasan-sexual-terhadap-13-santriwati-dan-pidana-mati-bagi-pelaku> accessed on June 10, 2024

<sup>10</sup>Ronny Hanitijo Soemitro, *Legal Research Methods and Jurimetrics*, Ghalia Indonesia, 3rd Edition, Jakarta, 2016, p. 48.

<sup>11</sup>Zainudin Ali, *Legal Research Methods*, Jakarta, Sinar Grafika, 2014, p. 105.

<sup>12</sup>J. Supranto, *Legal and Statistical Research Methods*, Rineka Cipta Publisher, Jakarta, 2013, p. 2-3

<sup>13</sup>Diana Yusyanti, *Legal Protection for Child Victims of Sexual Violence*, *De Jure Research Journal*, Volume 20, Number 4, December 2020, p. 619-636

The definition of protection according to the provisions of Article 1 point 6 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims determines that 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 LPSK or other institutions in accordance with the provisions of this Law. Justice is formed by correct thinking, carried out fairly and honestly and is responsible for the actions taken. A sense of justice and law must be upheld based on Positive Law to uphold justice in law in accordance with the reality of society that desires the achievement of a safe and peaceful society. Justice must be built in accordance with the ideals of law (Rechtidee) in a state of law (Rechtsstaat), not a state of power (Machtsstaat).<sup>14</sup>

The law places children in a reposition as legal intermediaries to be able to obtain rights or carry out obligations; and or to be able to be equated with the position of adults; or referred to as normal legal subjects, the special (special) position of children in the law is based on the consideration that children are humans with all their biological and psychological limitations who are not yet able to fight for everything that is their right. In addition, it is also because the future of the nation depends on the future of children as the next generation. Therefore, children as subjects of state law must be protected, cared for and fostered for the welfare of the children themselves. In this case, the special position of children in the eyes of the law cannot be separated from the following principles: The principle that children cannot fight alone, Children with all the limitations inherent in themselves are not yet able to protect their own rights.<sup>15</sup>

Sexual violence is any act of sexual assault directed at women, whether physical or non-physical and regardless of whether or not there is a personal relationship between the perpetrator and the victim.<sup>16</sup> Sexual violence is an act, either in the form of words or actions, carried out by someone to control and make another person engage in sexual activity that is not desired by the other person. There are two important elements in sexual violence, namely the element of coercion or the element of no consent from the other party, and the element of the victim being unable or not yet able to give consent, for example sexual violence against children.

Sexual violence is a despicable act that violates the values of norms that live in society, where the despicable values are recognized by both the state and society universally, meaning that this despicable act has been embedded in the

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<sup>14</sup>Lina Panggabean (et. al), Legal Protection for Children as Victims of Sexual Violence (Analysis of the Witness and Victim Protection Law), IURIS STUDIA: Journal of Legal Studies, Volume 5 Number 1, Jan 2024, p. 20-28

<sup>15</sup>Nurjaini, Legal Protection for Child Victims of Sexual Harassment, Al-Adalah: Journal of Islamic Law and Politics, Vol. 8, No. 2, July 2023, p. 162-173

<sup>16</sup>Aroma Elmina Martha, Women Violence and Law, UII Press, Yogyakarta, 2003, p. 36

subconscious of humans from generation to generation. Sexual violence is also an act that damages the name and honor of the victim in social life.<sup>17</sup>

The concept of recognition of 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 thrive in the container of "*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.<sup>18</sup> Legal protection for the Indonesian people is an implementation of the principle of recognition and protection of human dignity and honor based on Pancasila and the principle. There are several articles that can be charged against forms of sexual violence against minors, be it rape or molestation.<sup>19</sup>

Restitution should be an important part of punishment, especially in cases of child sexual abuse, where victims experience psychological and physical impacts that require serious treatment. Without restitution, victims do not receive the support needed for recovery, while perpetrators simply serve their sentences without any attempt to compensate for the victim's losses. Thus, an approach that only focuses on fines without considering the victim's rehabilitation needs ignores the aspect of justice for the victim.

In the criminal justice process, the existence of child victims of rape remains worrying. Punishing perpetrators of sexual violence does not eliminate the trauma suffered by children. Child victims of rape do not only suffer once, but can suffer repeatedly and require serious treatment. Considering that children are the mainstay and hope of parents and will also become the successors of the nation, they must be protected and given affection.<sup>20</sup>

The suffering of victims of sexual violence increases when in the trial process the victim only becomes a witness, in this case the victim's witness, so that the victim as the most disadvantaged party in the criminal trial process according to the Criminal Procedure Code seems to dehumanize the victim, the victim is only a

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<sup>17</sup>Rizki Setyobowo Sangalang, Legal Protection for Victims of Sexual Violence in Educational Environments, *Tambun Bungai Journal of Legal Studies*, Vol. 7 No. 2, September 2022, p. 176-192

<sup>18</sup>Pradityo, R. Restorative Justice in the Juvenile Criminal Justice System. *Journal of Law and Justice*, Vol. 5, No. 3, 2016, p. 319

<sup>19</sup>Sinaga, EY Implementation of Diversion at the Prosecution Stage in the Juvenile Criminal Justice System. *Badamai Law Journal*, Vol. 1, No. 2, 2016. p. 201-220

<sup>20</sup>Ardyaningsih Puji Lestari, Arfa, and Andi Najemi, Legal Protection for Child Rape Victims in the Jurisdiction of the Jambi District Court, *Journal of Legal Science*, Volume 7, Number 1, March, 2016, p. 85

witness who is only important to be used in providing information about what the perpetrator did. Even the victim's suffering must be examined as evidence that rape has indeed occurred. After all stages of the investigation and inquiry are complete, after all evidence has been collected, the victim's existence is no longer needed. The trial process also focuses more on the perpetrator, so that the victim automatically does not receive any more attention. What happens to the victim after the rape is the victim's own responsibility. Both wound recovery and healing from trauma due to rape are the victim's own responsibility, if the victim does not get the right to recovery in the form of restitution and/or compensation.

Children must be protected so that they do not become victims of crime by anyone (individuals or groups, private organizations or government) either directly or indirectly. In essence, children cannot protect themselves from various crimes that cause physical, mental and social losses in various areas of life. Children need help from someone to protect themselves.<sup>21</sup>

### **3.2. Ideal Arrangement for Legal Protection of Child Victims Against Criminal Acts of Sexual Violence Based on Justice**

With regard to laws and regulations, it is essential to eliminate all forms of discrimination enshrined in the different civil, criminal and labour laws, as well as those manifested in legal practices and procedures. In order for laws to play an effective role in defending women's rights and curbing violence, it is essential that mechanisms be established to monitor the enforcement of relevant laws and create awareness of gender issues in public institutions. To this end, Judges, Lawyers, Police officers and public sector officials in general should, regardless of their gender, be trained to recognize sexism and discrimination as part of the performance of their duties, to facilitate the reporting of crimes and to provide protection and assistance to victims.

The police and all law enforcement officers must also have a proactive attitude and behavior in order to know and find out who the perpetrators and networks of sexual violence crimes and other crimes are, and to provide the heaviest possible punishment. Every society has rights and obligations stated in the constitution and other laws and regulations. Restitution is one of the rights of victims of crime.<sup>22</sup>In Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Criminal Acts, Article 1 Paragraph (1) states: "Restitution is the payment of compensation imposed on the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs."

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<sup>21</sup>Mastur (et. al), Legal Protection for Child Victims of Sexual Violence, Journal of Lex Philosophy (JLP), Volume 1, Number 2, December 2020, p. 122-135

<sup>22</sup>Bambang Waluyo. 2018. Victimology: Protection of Victims and Witnesses. Sixth Edition, Sinar Grafika. Jakarta, p. 40.

In addition, reviewed from Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, it has also been stated that victims in a criminal act have the right to receive compensation in the form of restitution regarding wealth or income, compensation due to the occurrence of the crime and reimbursement of medical care costs. Children who are victims of pornography crimes also have the right to file for restitution rights as stated in Law Number 35 of 2014 concerning Child Protection, in Article 71 D Paragraph (1), which reads: "Every child who is a victim as referred to in Article 59 Paragraph (2) letters b, d, f, h, l, and j, has the right to file a lawsuit in court for the right to restitution which is the responsibility of the perpetrator of the crime."

The implementation of restitution must be in accordance with the principle of Restoration in the Original State (*restitutio in integrum*), this is an effort that can be made that the victim of the crime must be returned to the original condition before the crime occurred. Although it is based on the fact that it is impossible for the victim of a crime to return to the condition before experiencing the loss he suffered. This principle also emphasizes that the form of recovery to be carried out on the victim must achieve completeness in recovery and cover various aspects caused by the crime. Through the submission of restitution, the victim is expected to be restored to freedom, legal rights, social status, family life and citizenship, restoration of his work and restoration of his assets.

Protection of witnesses and victims in positive law in Indonesia has been regulated, although its nature is still very simple and partial. This can be seen in both material criminal law and formal criminal law. There is confusion for victims about the mechanism to be used in filing a restitution claim, which can be caused by the lack of harmony in the procedure for filing the right to restitution itself. In cases of sexual violence, law enforcement officers focus not only on punishing the perpetrators of sexual crimes but also on remembering that there are victims' rights in the form of compensation (restitution) due to the sexual violence crime. The community and all interested parties also need to pay attention to the rights of victims of sexual violence. Restitution given to victims of sexual violence crimes varies from reimbursement of medical and psychological costs, to assistance for victims of sexual violence in court.<sup>23</sup>

Basically, the regulation related to the right to restitution of children who are victims of criminal acts above is a form of protection for victims and is used as a reference for law enforcement officers to be able to provide more special attention to children who are victims of criminal acts. Restitution can be requested by either the victim, family, or their attorney based on a special power of attorney written in Indonesian and stamped. Child victims of sexual violence also have the

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<sup>23</sup>Wahyu Wagiman et al., *Compensation and Restitution Practices in Indonesia: A Preliminary Study*, Indonesia Corruption Watch, Jakarta, 2007, p. 12



right to obtain the right to recovery and financial compensation from the government if the recovery obtained from the perpetrator of the crime (restitution) or a third party is no longer possible to obtain. The rights of victims of crime include the right to obtain various services such as health services which are a form of service from the government. The state must provide protection related to the privacy of child victims of criminal acts, which is useful for providing safety and security for victims.<sup>24</sup> Restitution aims to return victims to the situation before victimization occurred, while compensation is in the form of compensation in the form of money or non-money such as rehabilitation which includes medical and psychological care for child victims of sexual violence as well as legal and social services.

However, in the implementation of restitution to child victims of sexual violence, problems arise if the perpetrator comes from a disadvantaged background. When the perpetrator is unable to pay compensation, various obstacles arise in the process of fulfilling the victim's rights. One of the main challenges is the inability of the perpetrator to fulfill his obligations. In this situation, even though the court determines the amount of restitution to be paid, the perpetrator who comes from a disadvantaged family background will not be able to fulfill his obligations. As a result, the victim cannot receive the compensation determined.

In this case, the state needs to be present to ensure that the victim's rights are protected. This can be done by establishing a special fund provided by the government or state institutions to provide compensation to victims of sexual violence. The fund can be used to cover costs that the perpetrator cannot afford, so that the victim still receives restitution in accordance with the court's decision.

#### **4. Conclusion**

Implementation of legal protection for child victims of sexual violence crimes in the verdict: Decision Number 396/Pid.Sus/2023/PN Mtr, where Defendant A was sentenced to 15 (fifteen) years in prison, and charged the defendant to pay a fine of 1,000,000,000.00 (one billion rupiah) subsidiary to 6 (six) months in prison. In the verdict, the judge did not impose a restitution sentence but a fine, of course this is unfair to the victim. This proves that judicial practices in Indonesia have not fully provided a guarantee of legal protection for victims of sexual violence crimes, especially children. The ideal regulation of legal protection for child victims of sexual violence crimes based on justice can be carried out through efforts to harmonize laws and regulations related to child sexual violence, especially in regulating the provision of restitution for victims.

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<sup>24</sup>Robbil Iqsal Mahendra, Forms of Legal Protection for Victims of Pornography Crimes, Indonesian Journal of Criminal Law and Criminology, Vol. 2, No. 2, 2021, p. 126-134.

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