

## Legal Protection for Child Victims of Criminal act of Interception (Case Study of Decision Number 160/Pid.Sus/2023/Pn.Clp)

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**Abstract.** Indonesia is a country based on law or a country of law. Children are a group that is very vulnerable to sexual violence because children are always in a weak or helpless state when threatened not to tell what they experienced. The increasing number of immoral cases, both sexual violence and sexual intercourse against children in society reflects the weak law enforcement in Indonesia so far. This thesis aims to determine the legal protection for child victims of sexual intercourse in court decision number 160 / pid.sus / 2023 / pn.clp and to analyze the obstacles faced in legal protection for children and their solutions. The approach method used in this study is a normative legal approach, the research specifications used are descriptive analysts, primary and secondary data sources and using qualitative analysis. This writing analyzes the Problem with the theory of Legal Protection and the theory of justice in court decision number 160 / pid.sus / 2023 / pn.clp. Based on the results of the study in this study in Decision number 160 / pid.sus / 2023 / PN Clp, it seems that there is a lack of legal protection for children as victims of sexual intercourse. The judge in deciding this decision is only punitive (punishing) which means only considering the contents of the indictment from the public prosecutor, and does not consider the protection of child victims. Although compensation restitution can be submitted separately. Based on its development, many laws regulate restitution and compensation Perma Number 1 of 2022 concerning Procedures for Submitting Restitution and Compensation Article 5. In efforts to provide legal protection for child victims of sexual intercourse, sometimes they encounter several obstacles, namely Children who are not open in providing information, Facilities and Infrastructure. To Overcome the Obstacles Found Several Increased coordination and cooperation between the police, authorities, justice, courts and the government, Increasing the Number of Personnel and Building cooperation with social institutions, non-governmental organizations,

*and educational institutions, and increasing the provision of infrastructure.*

**Keywords:** *child; protection; sexual; victims.*

## 1. Introduction

The Republic of Indonesia is a country based on law or a country of law. Children are a mandate and gift from God Almighty, entrusted to His servants (both parents) to be guarded, loved, cared for and guided to become good and responsible children and whose honor and dignity are inherent in the whole human being. Since in the womb, children have the right to live and develop both physically, mentally, and socially and have the right to live and develop both physically, mentally and socially and have the right to be protected both from the family environment, society and the state.<sup>1</sup>Children are a group that is very vulnerable to sexual violence because children are always in a weak or helpless state when threatened not to tell what they experienced. In almost every case found, the perpetrator is someone close to the victim.

The increasing number of immoral cases, both sexual violence and child molestation in society reflects the weak law enforcement in Indonesia so far. Cases of violence against children cause unrest in society, not only parents who have daughters, but also parents who have sons. Children who are victims of rape or molestation often experience prolonged trauma due to the incident. Most of them cannot forget the bad events they experienced.<sup>2</sup>According to Abdul Wahid and Muhammad Irfan, the problem of sexual violence (intercourse) is a form of crime that violates and tarnishes human dignity, and should be categorized as a type of crime against humanity or morality.<sup>3</sup>

In particular, the state pays attention to legal protection for children by issuing Law Number 35 of 2014 which is an amendment to Law on Child Protection Number 23 of 2002. This amendment emphasizes the importance of increasing criminal penalties and fines for perpetrators of crimes against children to create a deterrent effect and encourage real action to return children physically, psychologically, and also socially to victims and/or children as perpetrators. crimes as a step to prevent children as victims or perpetrators from becoming perpetrators of the same crime in the future.<sup>4</sup>so that the children's rights are fulfilled so that they can live, grow

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<sup>1</sup>Law of the Republic of Indonesia, "Law of the Republic of Indonesia Number 23 of 2002 Concerning Child Protection," 2002

<sup>2</sup>Sri Endah Wahyuningsih, Legal Protection for Children as Victims of Criminal Acts Against Morality in Current Positive Criminal Law, *Journal of Legal Reform*, Vol. 3 Number 2, 2016, p. 172.

<sup>3</sup>Abdul Wahid. Muhammad Irfan, *Protection of Victims of Sexual Violence (Advocacy for Women's Human Rights)* (Bandung: PT Refika Aditama, 2001). P. 2.

<sup>4</sup>Maidin Gultom, *Legal Protection for Children and Women*, Refika Aditama, PT Elex Media Kompetindo, Bandung, 2013, p. 2.

and develop in accordance with human dignity and honor. Based on Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Article 21 paragraph (1) states "The State, Government and Regional Government are obliged and responsible for respecting the fulfillment of children's rights without distinguishing between tribe, religion, race, group, gender, ethnicity, culture and language, legal status, birth order and physical and/or mental condition."

The development of the current era of globalization, science and technology from its positive impacts can be easily accessed also causes many negative impacts, including the increasingly sophisticated development of crime itself, both in terms of quantity and quality. Crimes or criminal acts that are currently widespread or even often occur in society are very disturbing and disrupt the peace and order of society. One of them is the crime of sexual harassment. Sexual harassment here is not only experienced by adults but also small children often become victims of sexual harassment. As one example of a case is a sexual crime in decision Number: 160 / pid.sus / 2023 / pn.clp which contains a case about an adult male committing sexual intercourse with a minor by using trickery and a series of lies. Where children who are still minors should be protected and guarded, but by irresponsible people they are instead made the object of an immoral crime and some of the perpetrators are people closest to their victims. around 30% are the child's family, most often brothers, fathers, uncles, or cousins; approximately 60% are other acquaintances such as family friends, caregivers, or neighbors, strangers are the perpetrators in approximately 10% of child sexual abuse cases.<sup>5</sup>

Based on the background above, the author is interested in researching cases of sexual intercourse with children which are presented in the form of a thesis entitled "Legal Protection for Child Victims of Criminal Acts of Sexual Intercourse (Case Study of Decision Number 160/Pid.Sus/2023/PN.CLP)".

## **2. Research Methods**

The approach method used by the author in compiling the journal uses the normative legal method. The research specification used in this study is the descriptive analysis type. In this study, the author emphasizes library research and primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines.

The data collection technique used in this study used literature study, by collecting data from the results of reviewing library materials and secondary data including primary legal materials, secondary legal materials and tertiary legal materials. The data analysis technique in this study was carried out using qualitative data analysis, namely giving meaning and interpreting each data, after being processed, it is then

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<sup>5</sup>Nurur Rohmah, Kunti Novitasari, and Ulya Diena H, "The Relationship between Perpetrators, Victims and Vulnerability in Children" 12 (2007): 5–10.

manifested in the form of sentences systematically to draw a conclusion about the object being studied.

### **3. Results And Discussion**

#### **3.1. Legal protection for child victims of sexual intercourse in Cilacap court decision number 160/pid.sus/2023/pn.clp.**

Legal protection for victims of sexual intercourse is part of the efforts to protect carried out by the government or authorities with existing regulations. Legal Protection is the protection of dignity and honor, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that will be able to protect one thing from another. Most of the victims are minors. Basically, children as victims of sexual intercourse can cause mental and psychological disturbances, so that children as victims experience trauma and severe mental and spiritual disturbances.

In the case of decision number 160/pid.sus/2023/pn.clp In the indictment made by the public prosecutor, the public prosecutor has made maximum efforts in determining the articles imposed on the defendant. Determination of these articles is also followed by proof of the correct elements of the crime. the defendant was proven guilty and legally committed deception, a series of lies or persuaded the child to have sexual intercourse with him or with another person as regulated and threatened with criminal penalties in Article 81 paragraph (2) of Law R1 Number 17 of 2016 concerning government regulations in lieu of Law Number 1 of 2016 concerning the second amendment to Law Number 23 of 2002 concerning Child Protection into law, the Defendant was sentenced to imprisonment for 6 (six) years and a fine of IDR 10,000,000 (ten million rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 6 (six) months. With the aggravating circumstances, the defendant's actions traumatized the victim's child, tarnished his honor and ruined his future, and the defendant's actions were contrary to morality, although there were also mitigating circumstances for the defendant in this case because the defendant admitted and regretted his actions and promised not to repeat them and the defendant had never been punished.

After the author reviewed the decision number 160/pid.sus/2023/PN Clp, it seems that there is a lack of legal protection for children as victims of sexual intercourse. The judge in deciding this decision is only punitive (punishing) which means only considering the contents of the indictment from the public prosecutor, and does not consider the protection of the child victim. In the decision, it appears that the judge only decides on criminal sanctions for the perpetrators of the crime of sexual intercourse. In addition, the sanctions given to the perpetrators are also relatively light, which should consider the long-term impact on the victim and the need for stricter protection for children in the legal system. The trial process that results in a court decision tends to forget and abandon the interests of the victim. In fact, the trial process is a solution to the problem of violations of victim protection.

Theoretically, the form of legal protection and rights that should be given to victims of crime in various ways depends on the suffering and losses experienced by the victim. Generally, this protection is given to victims as a result of the emergence of negative psychological impacts from a crime. Providing assistance in the form of rehabilitation is very suitable for victims of crime, especially sexual violence that leaves prolonged trauma.

However, in some cases, the panel of judges often does not provide restitution, compensation and rehabilitation in its decision. Although restitution compensation can be submitted separately. Based on its development, many laws regulate restitution and compensation because the law must follow and adjust to the patterns of people's lives. Following up on this, on March 1, 2022, Perma Number 1 of 2022 concerning Procedures for Submitting Restitution and Compensation for Victims of Criminal Acts was enacted.

In the case of a child victim, the application is submitted by the parent, family, guardian, heir or attorney or LPSK, in accordance with the provisions of laws and regulations. While Compensation for victims of serious human rights violations can be given in non-monetary/kind forms which are implemented in stages in the form of providing educational scholarships, job opportunities, or other forms.

In principle, the protection of a person's rights as a witness or victim is accommodated in the Criminal Procedure Code, but considering the types of criminal acts that are increasingly diverse and have effects or consequences for the safety of the lives of witnesses/victims or their families, in 2006 the Indonesian government issued Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. The Law on the Protection of Witnesses and Victims has regulated various rights granted by the state to victims of a criminal act that were previously not regulated and included in the Criminal Procedure Code.

Witness and Victim Protection (LPSK) in accordance with the provisions of the Law. The Witness and Victim Protection Agency or often abbreviated as LPSK is a non-structural institution established and responsible for handling the provision of protection and assistance to witnesses and victims based on the duties and authorities as stipulated in this Law.<sup>6</sup>

The aim of this institution is to realize protection for witnesses and victims in the criminal justice system, which means that the Witness and Victim Protection Agency (LPSK) must be able to create a condition where witnesses and victims truly feel protected and can reveal cases in criminal justice.<sup>7</sup>

### **3.2. Obstacles Faced in Legal Protection for Child Victims of Sexual Intercourse Crimes in Decision Number 160/Pid.Sus/2023/PN. Clp and Its Solutions.**

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<sup>6</sup>[https://id.wikipedia.org/wiki/Lembaga\\_Perlindungan\\_Saksi\\_dan\\_Korban](https://id.wikipedia.org/wiki/Lembaga_Perlindungan_Saksi_dan_Korban) (accessed on August 28, 2024 at 09.00 WIB)

<sup>7</sup><https://lpsk.go.id/profil/sekilaslpsk> (accessed on August 28, 2024 at 09.00 WIB)

Legal protection for children can be interpreted as an effort to protect the legal rights and freedoms of children and various interests related to the welfare of children. In general, law enforcement can be interpreted as an act of implementing certain legal means to enforce legal sanctions to ensure compliance with the provisions set, while according to Satjipto Rahardjo, law enforcement is a process to realize legal desires (i.e. the thoughts of the legislative body formulated in legal regulations) into reality.<sup>8</sup>

In the effort to provide legal protection for child victims of sexual intercourse, sometimes they encounter several obstacles that can arise from several groups, starting from law enforcement, perpetrators of violence, families, and also the surrounding community. Efforts to handle the law in the process of protecting children related to sexual intercourse cases are also carried out by law enforcement agencies, one of which is the Cilacap District Court Judge. In accordance with the results of the author's research, after interviewing Mr. I Wayan Sugiartawan, SHasone of the Judges at the Cilacap District Court that in implementing efforts to combat the crime of sexual intercourse there are several obstacles. The obstacles faced in efforts to provide legal protection for child victims of the crime of sexual intercourse are as follows:<sup>9</sup>

Among them is the Judge of the Cilacap District Court. According to the results of the author's research, after interviewing Mr. i Wayan Sugiartawan, SHasone of the Judges at the Cilacap District Court that in implementing efforts to combat the crime of sexual intercourse there are several obstacles. The obstacles faced in efforts to provide legal protection for child victims of the crime of sexual intercourse are as follows:<sup>10</sup>

1. Children who are not open in providing information and the victim's psychological disorders.

When giving information, the child is not open in giving his/her information. So this will make it difficult to find out the incident. This is because the child is afraid to tell the incident to others. The child's mental condition is really down, it is difficult to ask for information from the child concerned. There are children who are confronted with the perpetrator during the examination at the investigation level to provide information about the perpetrator. Is it true that the person shown is the perpetrator or not, there are children who are not ready to see the perpetrator because their mentality is really disturbed, so it becomes an obstacle in answering or explaining the incident by remembering the incident again.

2. Facilities and infrastructure

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<sup>8</sup>Satjipto Rahardjo, 1983, Problems of Law Enforcement, Sinar Baru, Bandung, p. 24

<sup>9</sup>Interview with Mr. I Wayan Sugiartawan, SH. Cilacap District Court Judge on August 28, 2024, at 14.10 WIB

<sup>10</sup>Interview with Mr. I Wayan Sugiartawan, SH. Cilacap District Court Judge on August 28, 2024, at 14.10 WIB

Like the examination room for giving children's statements, sometimes it is still one with adult witnesses or perpetrators of crimes, although the examination is not carried out simultaneously, this can certainly affect the legal process. Because it will take longer because children as witnesses must provide statements alternately with other victims/witnesses in the case.

The theory of justice reminds us that all children, without exception, are entitled to adequate protection. The theory of justice emphasizes the importance of transparent and fair processes, where children should be treated in a sensitive and friendly manner, which means treating children with care and kindness so that they feel safe in giving information. By addressing these obstacles and ensuring that the principles of justice are implemented, we can create a safer and more supportive environment for children, ensuring that their rights to protection and justice are truly met.

#### **4. Conclusion**

Decision number 160/pid.sus/2023/PN Clp seems to lack any form of legal protection for children as victims of sexual intercourse. The judge in deciding this decision is only *punitive* (punish) which means only considering the contents of the indictment from the public prosecutor, and not considering the protection of the child victim. In the decision it appears that the judge only decides on criminal sanctions for the perpetrator of the crime of sexual intercourse. Although compensation restitution can be submitted separately. Based on its development, many laws regulate restitution and compensation Perma Number 1 of 2022 Concerning Procedures for Submitting Restitution and Compensation article The obstacles faced in efforts to protect children who are victims of sexual intercourse are children who are not open in providing information and psychological disorders of the victim, and Facilities and Infrastructure. To Overcome the Obstacles Found Several Improvements in coordination and cooperation between the police, courts and government in handling, as well as Building cooperation with social institutions, non-governmental organizations, and educational institutions, Improving the provision of infrastructure.

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