

Legal Protection For Children As Victims Of Sexual Violence

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Abstract. *Children are a trust from God Almighty who need to be looked after, protected, and their physical and mental safety maintained. It is our shared responsibility, especially for parents at home and teachers at school. This is intended so that children have good attitudes and behavior from an early age, adolescence to adulthood who are able to stand alone and be responsible in order to face the continuation of their lives and future, living in a household and being loved by their husbands, children, and other family members. Children are part of the younger generation who have the potential to inherit the ideals of the nation's struggle, and they need to be nurtured and protected to ensure comprehensive physical, mental, and social growth and development (Taufik, 2013:15). Therefore, every country in the world must pay attention to problems and solutions that are acceptable to children to provide a sense of security, protection, and justice. Children play a crucial role in life. When a child becomes a victim of crime, it can damage their future and negatively impact their future generations, as so many children become victims of sexual violence. One of the causes is a lack of parental supervision. Children's human rights, which are part of human rights, are guaranteed and protected by both national and international law, as stipulated in the Constitution and the United Nations Convention of December 10, 1948. Provisions regarding human rights in Indonesia are not only stated in Articles 28 A to 28 J of the 1945 Constitution of the Republic of Indonesia but also stated in Law Number 39 of 1999 concerning Human Rights. Furthermore, children's rights are also included in the Convention on the Rights of the Child, which is a legally and politically binding agreement between various countries that regulates matters related to children's rights. This convention is a United Nations convention that protects children's rights and is part of a broad international instrument signed by 192 countries. Indonesia is one of 192 countries that have ratified the Convention on the Rights of the Child.*

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

1. Introduction

Children are a trust from God Almighty who need to be looked after, protected, and their physical and mental safety maintained. It is our shared responsibility, especially for parents at home and teachers at school. This is intended so that children have good attitudes and behavior from an early age, adolescence to adulthood who are able to stand alone and be responsible in order to face the continuation of their lives and future, living in a household and being loved by their husbands, children, and other family members.¹

Children are part of the younger generation who have the potential to inherit the ideals of the nation's struggle, and they need to be nurtured and protected to ensure comprehensive physical, mental, and social growth and development (Taufik, 2013:15). Therefore, every country in the world must pay attention to problems and solutions that are acceptable to children to provide a sense of security, protection, and justice.

Children play a crucial role in life. When a child becomes a victim of crime, it can damage their future and negatively impact their future generations, as so many children become victims of sexual violence. One of the causes is a lack of parental supervision. Children's human rights, which are part of human rights, are guaranteed and protected by both national and international law, as stipulated in the Constitution and the United Nations Convention of December 10, 1948.

Provisions regarding human rights in Indonesia are not only stated in Articles 28 A to 28 J of the 1945 Constitution of the Republic of Indonesia but also stated in Law Number 39 of 1999 concerning Human Rights.²

Furthermore, children's rights are also included in the Convention on the Rights of the Child, which is a legally and politically binding agreement between various countries that regulates matters related to children's rights. This convention is a United Nations convention that protects children's rights and is part of a broad international instrument signed by 192 countries. Indonesia is one of 192 countries that have ratified the Convention on the Rights of the Child. By ratifying this convention, Indonesia has an obligation to fulfill and protect children's rights from any act of violence or crime, particularly sexual violence.³

2. Research Methods

A research approach is a plan for how a study will be conducted. This plan is used to obtain answers to the formulated research questions. In this research approach,

¹Mubayyinah, F. (2017). SEMAI: Nine Anti-Corruption Values in Early Childhood Education. *Al-Hikmah: Indonesian Journal of Early Childhood Islamic Education*, 1(2), 223-238.

the author employed an empirical juridical research approach, utilizing secondary data as initial data and then continuing with primary data in the field to determine the effectiveness of applicable regulations, particularly regarding legal protection for children as victims of sexual violence.

3. Results and Discussion

3.1. Legal Protection for Children as Victims of Sexual Violence

Legal protection is a crucial element in regulating citizens who become victims of criminal acts. Article 1, paragraph 3 of the 1945 Constitution states: "Indonesia is a state of law." This means that Indonesia is a state based on law. Legal protection is, therefore, an essential element and a consequence of a state of law, and the state is obligated to guarantee the legal rights of its citizens. Legal protection refers to legal remedies provided by law enforcement officials to provide a sense of security, both mentally and physically, against harassment and threats from any party.

Children are essentially a trust from God Almighty, who must always be protected because they are inherently endowed with dignity, honor, and human rights that must be upheld. Children's human rights are part of the human rights enshrined in the 1945 Constitution and the United Nations Convention on the Rights of the Child. From a national and state perspective, children are the future of the nation and the next generation of the nation's ideals, so every child has the right to survive, grow and develop, participate, and have the right to protection from violence and discrimination, as well as civil rights and freedoms.⁴.

Legal protection for children or legal protection of children can include legal protection of children in the field of private law, and in the field of public law. Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection in Article 1 number 2 provides the following definition of 'child protection': "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination.

In relation to child protection, it is the responsibility and obligation of parents, the general public and institutions authorized by the courts and both central and

²Ceswara, Dicky Febrian and Wiyatno, Puji. (2018). Implementation of Human Rights Values in the Pancasila Principles. *Lex Scientia Law Review*. Vol 2 No 2.

³Gultom, Maidin. 2012. *Legal Protection for Children and Women*. Bandung:

⁴Arif Gosita, *Protection of Mandar Maju*, 2009).

regional governments. These provisions are regulated in Articles 20 to 26 of Law No. 23 of 2002.

Legal protection for child victims of sexual violence is also regulated by law, including:

1. Law Number 23 of 2002 as amended by Law Number 35 of 2014 concerning child protection
 - a) Article 59A concerning medical, psychosocial, social and judicial process assistance
 - b) Article 67B concerning guidance, assistance and social recovery of physical and mental health, and
 - c) Article 69A concerning education, social rehabilitation, psychosocial assistance, assistance in the judicial process.
2. Law Number 13 of 2006 as amended by Law Number 31 of 2014 concerning the protection of witnesses and victims.
 - a) article 5 regarding the rights of witnesses and victims
 - b) Article 6 concerning medical assistance, psychosocial and psychological rehabilitation, and
 - c) Article 10 regarding witnesses and/or victims cannot be prosecuted legally.
3. Law No. 11 of 2012 regulates the juvenile criminal justice system.
 - a) Article 19 regarding the identity of the child must be kept confidential
 - b) Article 23 concerning legal aid and assistance
 - c) Article 58 regarding children not being allowed to appear before the court
 - d) Article 90 concerning medical and social rehabilitation, safety guarantees, and ease of obtaining information about cases, and
 - e) Article 91 concerning medical and social rehabilitation, social reintegration and safe houses.

The phenomenon of violence against children remains prevalent in various regions in Indonesia. Children need to be protected from various forms of violence that

can impact their physical, psychological, and spiritual development. Just like adults, children, with all their biological and psychological limitations, have equal rights in every aspect of life, including social, cultural, economic, political, and legal aspects. However, in reality, many children still experience violations of their rights and become victims of various forms of violence, exploitation, abuse, discrimination, and so on.

Violence against children is a common occurrence, which can be damaging, dangerous, and frightening. Children who are victims of violence suffer not only material losses but also immaterial ones, such as emotional and psychological shock, which can impact their future lives. Forms of child abuse can include physical, psychological, and sexual acts.

Based on data, records, and empirical evidence, it is revealed that women and children are the groups most frequently affected by sexual violence. The prevalence of sexual violence, mostly experienced by children and women, has caused public anxiety, especially among parents who worry that their children will become victims of sexual violence. Sexual violence against children is very concerning, but not all cases of sexual violence against children can be handled and resolved optimally, especially for victims of sexual violence, where there has been no special treatment compared to perpetrators.

Many factors contribute to violence against women and children, including the prevailing patriarchal culture that views women as inferior to men. Furthermore, misperceptions about violence against women and children are also widespread, viewing violence as normal and the perpetrator's right.

Article 69 letter A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, states that special protection for child victims of sexual crimes as referred to in Article 59 paragraph (2) letter j is carried out through the following efforts:

- a) Education about reproductive health, religious values, and moral values;
- b) Social rehabilitation;
- c) Psychosocial support during treatment until recovery; and
- d) Providing protection and assistance at every level of examination, starting from investigation, prosecution, to examination in court.

The rights of child victims of sexual crimes are as follows:

1. Legal Aid

Legal assistance for victims of crime is essential, especially for child victims of sexual crimes. When dealing with law enforcement, such as investigators, prosecutors, or judges, children may be afraid to speak about their experiences. Legal assistance must be provided to victims of crime, whether requested or not. This is crucial due to the low level of legal awareness among most victims of violence.

The Child Protection Law states that not only children who are perpetrators of crimes have the right to receive legal aid, but also children who are victims. Law Number 48 of 2009 concerning Judicial Power emphasizes that everyone involved in a case has the right to receive legal aid and for those who cannot afford it, the costs are borne by the state. Article 59 A of the Child Protection Law states that special protection for children as referred to in Article 59 paragraph (1) is carried out through efforts to:

- a. Rapid handling, including physical, psychological and social treatment and/or rehabilitation, as well as prevention of diseases and other health disorders;
- b. Psychosocial support during treatment until recovery;
- c. Provision of social assistance for children from underprivileged families; and
- d. Providing protection and assistance in every judicial process. In Law Number 18 of 2003 concerning Advocates, it is emphasized that advocates are obliged to provide free legal assistance to justice seekers who cannot afford it. In fact, advocates may not refuse to provide legal assistance if someone needs it, including children as victims of sexual harassment or molestation who are financially unable. In fact, it is the obligation of legal counsel to accompany them whether asked or not.

In contrast to victims whose interests have been represented by the prosecutor, so that in practice the victim is rarely accompanied by a legal advisor. However, specifically for child victims of crime, they have the right to receive legal assistance, even though their interests have been represented by the prosecutor. It is very rare for child victims of sexual crimes to be accompanied by a legal advisor, but all victims during the examination process still receive assistance and the judge who leads the trial always asks, both the public prosecutor and the victim, even the judge often postpones the trial if the victim's companion is not present. Regarding special protection for children who are in conflict with the law in the context of children as victims, there are several important points to pay attention to, as referred to in Article 59 paragraph (2) letter b, carried out through:

- a) Humane treatment with attention to needs according to age;
- b) Separation from adults;
- c) Effective provision of legal aid and other assistance;
- d) Implementation of recreational activities;
- e) Freedom from torture, punishment or other cruel, inhuman or degrading treatment;

Providing support from parents/guardians and people trusted by the child;

- g. Providing social advocacy;
- h. Providing accessibility, especially for children with disabilities;
- i. Provision of education;
- j. Provision of health services;
- k. Granting of other rights in accordance with the provisions of statutory regulations

2. Witness and Victim Protection

The Witness and Victim Protection Law states in Article 34 that:

- a) Every victim of human rights violations has the right to physical and mental protection from threats, harassment, terror and violence from any party.
- b) This protection must be carried out by law enforcement officers and security officers free of charge.

In Government Regulation Number 2 of 2002, the forms of protection are outlined as follows:

- a. Protection of the personal safety of victims or witnesses from physical and mental threats.
- b. Confidentiality of victim and witness identities.
- c. Providing information during examination in court without meeting the suspect face to face.

The procedures for providing protection through Government Regulation Number 2 of 2002 regulate the procedures and mechanisms for protection, namely in Articles 5 to 8, the essence of which is as follows:

- a. Legal protection for victims and witnesses is carried out based on:
 1. Initiatives of law enforcement and security forces, and services or
 2. Application submitted by the victim or witness.
- b. Application submitted to:
 1. National Human Rights Commission at the investigation stage
 2. The prosecutor's office at the investigation and prosecution stage.
 3. The court is at the examination stage.
- c. The request is then forwarded to the security forces for further action. Besides the victim and witnesses, the submissions are of course made to the National Human Rights Commission (Komnas HAM), the Prosecutor's Office, or the Court. By security forces, we mean the Indonesian National Police (Polri).
- d. Applications for protection can be submitted directly to security forces.
- e. After receiving the application, law enforcement officers or security officers will:
 - Clarification of the truth of the application.
 - Identify the form of protection required.
- a. Protection is terminated if:
 - b. Upon the request of the person concerned
- The victim and/or witness died.
- Based on the considerations of law enforcement officers or security officers, protection is no longer necessary.
- f. Termination of protection must be notified in writing to the parties concerned no later than 3 (three) days before the trial is terminated.

- g. Victims and witnesses are not charged any fees for the protection provided. All costs are borne by the respective law enforcement agencies or security forces.

3.2. Obstacles and Problems in Legal Protection for Children as Victims of Sexual Violence

Legal protection for children can be defined as efforts to legally protect children's fundamental rights and freedoms, as well as various interests related to their welfare. Legal protection for children encompasses not only legal protection during the judicial process but also encompasses all aspects of the child's freedom to receive appropriate treatment like other citizens. Legal protection aims to provide legal certainty, benefit, and justice.

Factors causing legal protection for child victims of sexual crimes to not be implemented properly include:

a) Legal Substance

Unclear and indecisive regulations will open up opportunities for law enforcement to interpret according to their own line of thinking, which can open up opportunities for misinterpretation that disrupts the fair implementation of the law. Moreover, if the legal regulations do not yet exist, law enforcement will seek other legal grounds that they believe are more appropriate to apply in the event. In efforts to legally protect children, harmony or coherence is needed between various regulations of varying degrees. Incompatibility between legal regulations can affect law enforcement. The established paradigm is that the function of the Child Protection Law is still limited to the realm of prosecution against perpetrators of sexual violence against children, not to preventive or preventative efforts. The principle is that a legal instrument must function as a tool of engineering. Therefore, the Child Protection Law must focus on legal protection efforts, not only limited to prosecution in the practical realm but also have a concept capable of formulating the problem fundamentally, how the specific and practical roles of all parties in legal regulations must be acted upon, starting from the smallest unit of the family, the educational sector, Non-Governmental Organizations (NGOs), Regional and Central Governments.

In Article 15 of the Child Protection Law, protection against sexual crimes is included in the last point at point f, meaning that the paradigm of legal protection for children as victims of sexual violence has not become a top priority in legal protection.

Regarding the substance of the law, there are some aspects that have not been properly addressed and implemented, resulting in less than optimal legal protection for child victims of sexual crimes. These four principles are:

- a) The principle of non-discrimination is applied by not making any distinction and continuing to process the case without any distinction whatsoever;
- b) The principle of the best interests of the child is implemented by keeping the victim's identity confidential;
- c) The principle of the right to life by providing assistance in the form of counseling, medical assistance and legal assistance in providing housing; and
- d) The principle of maintaining the child's opinion, namely the child's statement in providing testimony, must be reconsidered because in this case the child is the victim and also a witness.

If these four principles are implemented, legal protection for children as victims of sexual abuse is in accordance with Presidential Decree Number 36 of 1990 concerning the Convention on the Rights of the Child. The Child Protection Law has formulated quite severe criminal sanctions, both in the form of imprisonment and fines, and cumulative threats to perpetrators of crimes, and these criminal threats are accompanied by minimum sentences.

In the Child Protection Law, Article 59 paragraph (1) is still abstract and open to multiple interpretations, namely: "The Government, Regional Governments and other state institutions are obliged and responsible for providing special protection to children." The term "other state institutions" cannot be interpreted freely and does not specifically refer to one of the state bodies or institutions that is delegated the authority to be obliged and responsible for providing special protection to children, including in the case of exploitation of children as victims of sexual crimes.

The Child Protection Law must clearly and firmly identify the Indonesian Child Protection Commission as the representative state institution with the authority and responsibility for child protection. Implementing regulations with a lower status or specific nature, such as Minister of Social Affairs Regulation Number 9 of 2015 concerning Guidelines for the Social Rehabilitation of Children in Conflict with the Law by Social Welfare Institutions, are required. The Ministerial Regulation also does not specifically mention the institution that is specifically authorized and functionally responsible for handling child protection issues. The Child Protection Law does not yet regulate legal sanctions for parties who negligently or intentionally fail to provide legal protection to child victims of crime.

Ideally, a legal obligation must be accompanied by legal accountability, including the legal consequences.

b) Legal Structure

The legal structure refers to law enforcement agencies responsible for legal protection for children in conflict with the law at their age, and more specifically for children who are victims of sexual crimes. This legal structure includes investigators, prosecutors, judges, and legal counsel. Technical obstacles during investigations of children as victims of sexual crimes, particularly in the process of gathering evidence, arise because sexual violence cases generally involve no witnesses other than the victim. Psychological burdens, fear, shame, trauma, and threats from the perpetrator prevent victims from being frank in providing information. Victim witnesses sometimes refuse to attend the examination process due to their low level of awareness about providing information to investigators and their unwillingness to become involved in legal issues.

c) Legal Culture

Legal culture essentially encompasses the values underlying applicable law, and these values are abstract conceptions of what is considered good, worthy of being obeyed, and what is considered bad and should be avoided. These cultural values can be described in rules and views in attitudes and actions as a series of final values to create social renewal (law as a tool of social engineering), maintain and maintain social control to create peace in social interactions. Legal protection for child victims of sexual crimes, repressively by imposing sanctions on perpetrators of sexual crimes. One thing that has been discussed is castration for perpetrators of sexual crimes. The issue of castration punishment has not been accommodated in legislation, because there are still pros and cons.

Based on research, the opposition to castration as a punishment stems from several figures known as child advocates and the National Commission on Violence Against Women. The National Commission on Violence Against Women (Komnas Perempuan) regrets that castration and the death penalty remain as punishments for perpetrators of sexual violence, especially since Indonesia has ratified the Convention Against Torture through Law No. 5 of 1998, which prohibits all forms of cruel, inhumane, and/or degrading punishment. The death penalty and castration are among these punishments.

4. Conclusion

The maximum penalty for rape, as stipulated in the Criminal Code, is 15 years. In reality, many rape perpetrators don't receive the maximum sentence. Meanwhile, their victims endure a lifetime of shame and psychological trauma. A minimum

sentence and a maximum sentence of life imprisonment should be enforced for rape. Some have even called for the death penalty. This severe penalty is intended to deter rape perpetrators and warn the public against attempting this crime. Efforts that can be made to provide legal protection for victims of rape are: Rehabilitation efforts, both within and outside institutions, protection efforts from identity disclosure through mass media and to avoid labeling, providing safety guarantees for victim witnesses and expert witnesses, both physically, mentally and socially and providing accessibility to obtain information regarding case developments.

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