

Legal Protection Efforts for Child Victims of Sexual Violence in The Child Criminal Justice System in Indonesia

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Abstract. *This study aims to determine and analyze legal protection efforts for child victims of sexual violence in the juvenile criminal justice system in Indonesia and to determine and analyze obstacles and solutions to legal protection efforts for children in the juvenile criminal justice system in Indonesia. The method used in this research is the Sociological Juridical method, the specifications in this research are descriptive analytical, the data used are primary data and secondary data, using data collection through interviews and literature studies, qualitative data analysis, problems are analyzed using the theory of Legal Certainty According to Gustav Radbruch, the theory of legal effectiveness according to Soerjono Soekanto and the Theory of Child Protection According to Maidin Gulton. The results of this study indicate Protection for children who are perpetrators of sexual violence is that there are several things that must be considered where the trial is declared closed to the public for moral cases, including those who are victims of Article 153 paragraph (3) of the Criminal Procedure Code, all law enforcers are required to pay attention to the best interests of children Article 18 of the SPPA Law, Not permitted to use official attributes Article 22 of the SPPA Law, Examination must be accompanied by parents/social workers Article 23 paragraph (2) of the SPPA Law, the identity of the child victim must be kept confidential in news reports in print/electronic media Article 199 paragraph (1) of the SPPA Law, Provision of Legal Protection Article 69A of the SPPA Law.*

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

1. Introduction

Indonesia is one of the countries that follows technological developments. Technological developments have in fact had a significant impact on the lives of people, from adults to teenagers to children. With the ease of access to

information in the era of globalization, there are certainly impacts that can influence people's behavior, which is divided into two: positive and negative behavior. Positive behavior is behavior that can have a positive influence on society, while negative behavior is behavior that influences people's character in a direction that deviates from the community's culture and culture. Negative impacts that society experiences begin with ordinary deviations, which over time will become a habit in society with the occurrence of unexpected delinquency or crime.

In fact, although the 1945 Constitution emphasizes the importance of protecting children's rights from violence and discrimination, the reality is that the implementation of these protections has not been fully effective in protecting children from threats and violence. Obstacles in law enforcement and the enforcement of children's rights mean that children in Indonesia have not yet fully experienced the promised protection.¹

Children in various laws and regulations have pluralism, this occurs because each law and regulation regulates its own definition of children.² Talking about children is important because children are the potential fate of humanity in the future, where they play a role in determining the history of the nation, a reflection of the nation's attitude to life in the future.³ Philosophically, children are the nation's golden generation. Therefore, their education must be given proper attention and care. In reality, children, who constitute this golden generation, often face legal challenges. Approximately 4,000 Indonesian children are brought to court each year for crimes such as theft, extortion, and other crimes. Consequently, law enforcement officials are at a loss as to how to handle children involved in criminal acts. Child protection means safeguarding the potential of human resources and developing the whole person, toward a just and prosperous society, materially aligned with the values of Pancasila and the 1945 Constitution.⁴

Criminal acts are not only committed by adults but children in committing crimes that are no less than the actions committed by adults, according to Wagiati Soetodjo it is too extreme if criminal acts committed by children are called crimes, because basically children have an unstable mental condition, the process of psychological stability produces critical attitudes, aggressive and shows behavior that tends to act to disturb public order. This cannot be said to be a crime, but rather delinquency caused by an unbalanced psychological

¹Laurensius Arlman, 2016, "The Position of the Indonesian Child Protection Commission as a State Auxiliary Body in the Indonesian Constitutional Law System", *Justitia Et Pax Law Journal*, p. 33

²Abintoro Prakoso, *Child Protection Law*, Yogyakarta: Laksbang Pressindo.2016, p. 38.

³Wagiati Soetedjo, 2013 *Criminal Law on Children (Revised Edition)*, Bandung: Pt Refika Aditama, p. 5.

⁴Nashriana, 2011, *Criminal Legal Protection for Children in Indonesia.*, Jakarta: Rajawali Pers, p. 1.

condition and the perpetrator is not yet aware and understands the actions he has done. Criminal behavior committed by children is driven by childhood factors because children should be playing and studying, but in reality children are no less competitive than adults in committing crimes, but the State differentiates crimes committed by adults and those committed by children, the State is more lenient in criminal acts committed by children because children are the shoots of the nation and the next generation of the nation so that every child perpetrator of a crime who enters the criminal justice system must be treated humanely as stated in the provisions of Law Number 23 of 2002 concerning the Child Protection Law, namely non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the opinion of the child. One of the phenomena involving children as perpetrators of crimes that often occur is Sexual Crimes. This is very worrying because Sexual Crimes by children do not only occur in Bekasi City and Central Java Province, but in all major cities and in rural areas in Indonesia have been widespread. Sexual violence in Indonesia continues to increase and has even reached a very worrying level. The development of Sexual Crimes is increasing day by day, so that it becomes one of the causes of the moral damage of a nation.⁵

Law, as a social rule or norm, is inseparable from the values prevailing in society. It can even be said that law is a reflection and concretization of the values that prevail in society at any given time. Law must be able to serve as a guardian of order, peace, and a guide to behavior in community life. Law must be able to be a reformer in national and state life. It must be formed with a future-oriented orientation (forward-looking), not built with an orientation to the past (backward-looking). Therefore, law must be able to be a driver and pioneer to change people's lives for the better and benefit all parties.

Moral offenses and sexual harassment are two examples of moral violations that are not only national legal issues in one country but also global issues affecting all countries. Moral offenses and sexual harassment are committed by people from all socioeconomic classes, from the lowest to the highest, and are not primarily committed by members of the middle or lower classes, let alone individuals with little or no formal education.⁶

The imposition of criminal sanctions should be used as a last resort or also called *Ultimum remedium* as long as other efforts can be made for the common good. Quoting the opinion of H.G. de Bunt in his book *strafrechtelijke handhaving van miliue recht*, criminal law can be the main weapon (*primum remidium*) if the victims are very large, the suspect/defendant is a recidivist, and the losses are irreparable. Then, Remmelink concluded, that it is very clear and real as a sharp

⁵Hari Murti, 2017, *Morality*, Medan: Cv. Mitra, p. 58.

⁶Heri Santoso, 2019, "Legal Protection for Child Victims of Sexual Harassment," *Lex Journal: Legal & Justice Studies* 3, No. 2, <https://doi.org/10.25139/Lex.V3i2.2186>.

sanction, criminal law will only be imposed if other, lighter law enforcement mechanisms have been ineffective or are not considered appropriate.⁷ Regarding the use of criminal law, the requirements of criminal law/criminal sanctions can be used as a *primum remedium*, namely:⁸

- a. If it is really needed and other laws cannot be used (mercenary);
- b. Causing a huge number of victims;
- c. The suspect/defendant is a recidivist;
- d. The loss is irreparable;
- e. If other lighter law enforcement mechanisms are useless or are not considered.

However, although some experts provide the view that criminal law can be used as a *primum remedium* with certain criteria as mentioned above, criminal law should be placed as a last resort (*Ultimum remedium*) in criminal punishment, because in fact criminal law is the harshest law among other legal instruments that control people's behavior. In addition, it is necessary to understand that the determination of criminal sanctions should be carried out in a measured and careful manner, because it is related to the policy of eliminating freedom from human rights legalized by law. Sudikno Mertokusumo argues that laws that function as protection of human interests in their enforcement must pay attention to 3 (three) fundamental elements of law, namely: legal certainty (*Rechtssicherheit*), benefit (*Zweckmassigkeit*) and justice (*Gerechtigkeit*).⁹

Sexual violence remains a challenging issue, including in law enforcement and the provision of services to victims. Not all cases are fully identified, a situation that can be caused by various factors, such as social perceptions linking sexual violence to stigma, barriers to access to legal processes, and approaches to resolution that are not fully oriented toward victim recovery. Report handling varies, depending on the individual law enforcement officer. Adequate training for law enforcement officers has not been provided evenly, so the legal substance does not cover all types of sexual violence. The current legal system also does not provide female victims with access to justice. Sexual violence against children is a form of abuse in which adults or older adolescents exploit children for their own sexual gratification.

⁷Romli Atmasasmita, 2010, *Globalization and Business Crime*, Kencana Prenada Media Group, Jakarta, p. 192

⁸I Made Agus Mahendra Iswara, 2013, *Penal Mediation: Application of Restorative Justice Values in the Settlement of Balinese Customary Crimes*, Thesis, Postgraduate Program in Law, University of Indonesia, Jakarta, p. 6.

⁹Sudikno Mertokusumo, 2005, *Understanding Law: An Introduction*, Liberty, Jakarta, p. 163.

These abusive practices can include a variety of actions, from forcing or requiring a child to engage in sexual activity (regardless of whether the act is successful), indecent exposure of genitals to a child, showing them pornography, engaging in sexual intercourse, having physical contact with a child's genitals (in a non-medical context), to involving a child in the production of pornography. Even viewing a child's genitals without physical contact is still a form of abuse, except in non-sexual contexts such as medical examinations.¹⁰ In response to this concerning situation, the government has enacted laws specifically addressing sexual violence against children, aiming to provide stronger protection for children's rights and take firm action against perpetrators of sexual crimes against children. These include Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

Based on data from SIMFONI PPA (Online Information System for the Protection of Women and Children), there were 1,294 cases of sexual violence in Central Java, with 581 cases (children aged 6-12 years) and 1,134 (children aged 13-17 years).¹¹ Another case occurred in Bekasi, where an eight-year-old boy in Bekasi, West Java, was accused of sexually assaulting at least four other children. The child victim in this case was also male and younger than the perpetrator.¹²

This disparity between legal norms and field practice underscores the need for a reconstruction of the application of the *Ultimum Remedium* principle in the Indonesian juvenile criminal justice system. This reconstruction is urgently needed to improve the legal structure and the perspective of law enforcement officials to have stronger standards of protection for child victims, so that the gap for criminalization can be completely closed. Based on this urgency, this study aims to review and reformulate the implementation of the *Ultimum Remedium* principle as a preventive measure so that child victims of sexual crimes receive restoration of their rights, rather than receiving criminal sanctions that can damage their future. Therefore, the researcher is interested in conducting a study entitled "Legal Protection Efforts for Child Victims of Sexual Violence in the Indonesian Juvenile Criminal Justice System."

2. Research Methods

The method is a basic process regarding the procedure for finding a solution to a problem, while research is a careful examination of signs in order to obtain human knowledge, so the research method can be interpreted as the basic procedure for finding a solution to existing problems in carrying out research

¹⁰Sulistiyowati Irianto, 2020, *Women and Children in Law and Courts*, Jakarta: Obor Library Foundation, page 25

¹¹ <https://kekerasan.kemenpppa.go.id/Ringkasan> Accessed on January 29, 2026 at 20.37 WIB.

¹² <https://tirto.id/Kasus-Pencabulan-Anak-Di-Bekasi-Perlu-Pendekatan-Komprehensif-Hcwg> Accessed on January 29, 2026 at 20.45 WIB.

related to legal protection efforts for child victims of sexual violence in the child criminal justice system in Indonesia.¹³ The sociological legal approach, also known as field research, examines the applicable legal provisions and what actually happens in society.¹⁴

3. Results and Discussion

3.1. Legal Protection Efforts for Child Victims of Sexual Violence in the Juvenile Criminal Justice System in Indonesia

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 government 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.¹⁵ Children who are victims of sexual violence are essentially deprived of their basic rights. The human dignity that should be upheld is instead stripped away and desecrated. Children, who should be protected and who are the future leaders, potential, and young generation who will carry on the nation's ideals, play a strategic role, and possess unique characteristics and traits that guarantee the continued existence of the nation and state in the future, are instead used as objects or tools to satisfy the depraved desires of certain individuals and groups.

The above indicates that a child's right to freedom, peace, and happiness has been violated, as sexual violence inevitably leaves scars. These scars are not only physical but also psychological. In many cases, lingering psychological trauma can lead to long-term mental health problems, especially as the child approaches adulthood.¹⁶ The rise of sexual crimes against children has become a special concern for the Government to address this, so that Law Number 35 of 2014 was born concerning amendments to Law Number 23 of 2002 concerning Child Protection which was made with the intention of improving the previous Law so that child victims, especially victims of sexual violence, can be better protected. The regulations related to acts of sexual violence against children in this Law are in the criminal threat of providing increased criminal sanctions and fines for perpetrators of crimes against children, with the aim of providing a deterrent

¹³Soejono Soekamto, 1986, *Introduction to Legal Research*, Jakarta: Ui Press, p. 6

¹⁴Mukti Fajar and Yulianto Achmad, 2010, *Dualism of Normative and Empirical Legal Research*, Yogyakarta: Pustaka Pelajar, p. 175.

¹⁵Supriyadi W. Eddyono, "Introduction to the Convention on the Rights of the Child", http://Lama.Elsam.Or.Id/Downloads/1262854039_20_Konvensi_Hak_Anak.Pdf, Accessed on February 13, 2026 at 14.00 WIB.

¹⁶Olivia Johar, 2021, *Law Enforcement Against Criminal Acts of Indecent Acts*, Faculty of Law, Lancang Kuning University, Pekanbaru, Riau, p. 41

effect, as well as encouraging concrete steps to restore the physical, psychological and social well-being of child victims.

The increased criminal sanctions for perpetrators of sexual violence against children in this Law have not been able to provide a deterrent effect to the perpetrators, as evidenced by the increasing data on sexual violence from year to year, until then in 2016 there was a rape incident against Yuyun by 14 young men which resulted in the victim's death. This incident made various elements of society react strongly and asked the government to take a firm stance against perpetrators of sexual violence against children. Due to this situation, the government declared sexual crimes against children as extraordinary crimes, so that the government issued PERPPU Number 1 of 2016 dated May 25, 2016 concerning the second amendment to Law Number 23 of 2002 concerning child protection which was later stipulated as Law, namely Law Number 17 of 2016. Law Number 17 of 2016 essentially increases the prison sentence and fines if the perpetrator's actions cause more than one victim, result in serious injury, mental disorders, infectious diseases, impaired or loss of reproductive function, and/or death of the victim. Additional penalties include announcing the perpetrator's identity and taking action in the form of chemical castration, installation of electronic detection devices and rehabilitation.¹⁷

This law clearly states that children are the potential and successors of the nation's ideals, the foundations of which have been laid by previous generations. Because children are unable to nurture and protect their own well-being, protecting their rights is the government's responsibility. The Indonesian government has actually made various efforts to protect these children under the law. Formally, this has been done by issuing several laws related to children, namely Law of the Republic of Indonesia Number 17 of 2016 concerning the second amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, and ratifying several international conventions related to children. This clearly demonstrates the government's efforts to address the problem of sexual violence against minors. However, in practice, legal protection efforts for child victims of sexual violence remain unclear, as are the procedures for children to receive legal protection.

According to Lyness, "Sexual violence against children includes the act of touching or kissing a child's sexual organs, sexual acts or sexual harassment against children, showing pornographic media/objects to children, showing genitals to children and so on." Sexual violence (sexual abuse) is a type of

¹⁷Indriastuti Yustiningsih, 2020, Legal Protection of Child Victims of Sexual Violence from Re-victimization in the Criminal Justice System, *Lex Renaissance* No. 2 Vol. 5, P. 290 <https://Journal.Uii.Ac.Id/Lex-Renaissance/Article/Download/17206/Pdf/45474>

violence that is generally divided into 2 categories based on the identity of the perpetrator, namely:¹⁸

1. Family violence (familial abuse), which is sexual violence between family members who are still related by blood, is called incest. This includes someone who acts as a substitute parent, for example a stepfather, lover, caregiver, or someone who is considered to care for the child. Mayer explains the categories of incest in families, the first four categories are sexual molestation, this includes non-coital relations, petting, fondling, exhibitionism and voyeurism, anything related to the perpetrator's sexual arousal. The second category, sexual assault, relates to oral or interaction using genitals, masturbation, stimulation involving the penis in the mouth (fellatio), and stimulation related to the mouth on the clitoris (cunnilingus). The last category, which is considered the most dangerous, is forcible rape, which involves sexual intercourse with fear, violence, and threats that make it difficult for the victim. Mayer said that the most common cases are in the last two categories, which cause the most severe shock for the victim.

2. Extrafamilial abuse is violence perpetrated by individuals other than the victim's family members. In cases of sexual abuse outside the family, the perpetrator is generally an adult known to and on good terms with the child, as well as the child acting as the perpetrator. The child is then invited by the perpetrator into a situation where sexual abuse occurs, often offering the child certain rewards they would not normally receive from their family. The child victim usually remains silent for fear of their parents' anger if they find out. Furthermore, some parents They don't seem to care much about where their children are or who they spend time with. Children who frequently skip school are more susceptible to this, so you should always be vigilant.

Cases of sexual violence occurred in the city Bekasi where an eight-year-old boy in Bekasi, West Java, is suspected of being the perpetrator of an alleged sexual assault case against at least four other children. The child who was the victim in this case, also a boy and younger than the perpetrator, namely 5 years old, with strange behavior where suddenly he was reluctant to worship and stayed overnight at his grandparents' house. The child victim who usually rushed to the mosque when the call to prayer sounded, even his condition worsened by no longer wanting to pray Friday prayers. Then this incident was revealed when the child victim was asked by his mother who admitted that his playmate had committed sodomy 3 times. Efforts that can be seen in the case in this study are legal protection for children who are in conflict with the law and children as victims, especially victims of sexual violence. Based on the Bekasi case, it is classified as a type Sexual abuse committed outside the family (extrafamilial abuse) where the perpetrator is not a family member and the perpetrator is still

¹⁸Sri Maslihah. (2006). "Violence Against Children: Transitional Model and Long-Term Impacts". Edukid: Journal of Early Childhood Education, Vol. 1, No. 1, Pg. 25.

a child. This clearly gives rise to a specific concept in this research, namely examining the form of protection for children as perpetrators of sexual violence and the condition of children as victims of sexual violence cases.

The concept of child protection covers a broad scope, in the sense that child protection is not only about protecting the child's body and soul, but also includes protection of all their rights and interests that can guarantee normal growth and development, both spiritually, physically and socially so that Indonesian children will develop into Indonesian adults who are able and willing to work to achieve and maintain the National Development goals mentioned above.¹⁹

Children who commit crimes must also have their rights protected as children, because they are potential candidates who can carry on the ideals of the nation and state in the future. Therefore, the process of child growth and development must be well maintained. This is certainly a shared responsibility between parents, society, and the state to ensure proper guidance and treatment for children. One form of protection for children's rights provided by the state is the establishment of various regulations that have principles to protect children's rights, one of which is the Law on Child Protection. Meanwhile, in an effort to protect children from legal arbitrariness in the criminal process, the Law on the Juvenile Criminal Justice System was born, where regulations aim to safeguard and protect children's rights, even if the child commits a crime. This regulation is expected to provide protection for children who become perpetrators of crimes during the process of resolving them. Philosophically, the juvenile criminal justice process must prioritize the protection and rehabilitation of children who commit crimes, recognizing that children have a number of limitations compared to adults. Therefore, in carrying out the criminal process against children, the principles of child protection must be upheld as stated in the Child Protection Law, namely non-discrimination, the best interests of the child, the right to life, survival and development and respect for the child's opinion, and Article 16 Paragraph (3) of the Child Protection Law states that the arrest, detention or criminal act of imprisonment of children is only carried out in accordance with applicable law and can only be carried out as a last resort (*ultimum remedium*).

In an effort to implement the principle of *ultimum remedium*, the juvenile justice system in Indonesia prioritizes the concept of restorative justice in its implementation. Restorative justice is a process where all parties involved in a particular crime work together to solve the problem, of course for the common

¹⁹Maidin Gultom, 2008, *Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia*, Bandung: Pt Refika Aditama, p. 3

good and achieve a win-win solution, by creating an obligation to make things better by involving the perpetrator, victim, and community in finding solutions for improvement, reconciliation, and reassurance that are not based on revenge. This effort is evident in the juvenile criminal justice process, where special treatment is provided for children in conflict with the law from the beginning of the trial. One of these is the mandatory implementation of Diversion during the investigation process by investigators. Diversion is an action or treatment to divert or place juvenile perpetrators of criminal acts out of the criminal justice system.

The main principle of implementing the Diversion concept is persuasive action or a non-penal approach and providing an opportunity for someone to correct mistakes. This diversion process is intended to provide protection for children in conflict with the law. If the Diversion process is successful, the child in conflict with the law may not be processed further through the courts. However, if Diversion is unsuccessful, the child will still follow the criminal justice process, but with special treatment as stipulated by law, while remaining oriented towards the principles of child protection, and in imposing sanctions by the Judge also taking into account the best interests of the child.

Handling criminal acts committed by considering the child's status needs to be considered with all its unique characteristics and traits. Although children can determine their own actions based on their feelings, thoughts, and desires, their surrounding circumstances can influence their behavior. Parents and the surrounding community are more responsible for the guidance, education, and development of children's behavior in dealing with the problem of delinquent children.²⁰

Article 58 paragraph (1) of Law Number 35 of 2014 expressly states that child protection aims to guarantee the fulfillment of children's 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 order to realize Indonesian children who are qualified, have noble morals, and are prosperous, because this article is the basis for ensuring that every child who is a victim of sexual violence receives comprehensive and sustainable protection. This provision provides a strong philosophical basis that child protection is not just a moral obligation, but is a legal obligation that must be fulfilled by the state, society, family, and parents.²¹

²⁰Explanation of Law Number 3 of 1997 concerning Juvenile Courts

²¹Indonesia, Law on Amendments to Law Number 23 of 2002 concerning Child Protection, Law No. 35 of 2014, Article 58 Paragraph (1)

3.2. Obstacles and Solutions to Legal Protection Efforts for Children in the Criminal Justice System for Children in Indonesia

The legal protection model for victims of sexual violence in Sleman Regency is heavily influenced by the quality and clarity of applicable legal norms. Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence is a legal document that explicitly outlines the principles, definitions, types of crimes, and the rights of victims that require protection. However, despite the availability of legal norms, implementation at the regional level still faces numerous obstacles. In practice, many law enforcement officers (APH) still do not fully understand the substance of the TPKS Law, which often leads to uncertainty in the legal process for victims.²²

Several studies on the implementation of juvenile criminal justice have found that the criminal justice process for children has a negative impact on them. Imprisonment for children has shown a tendency to be detrimental to their future mental development. Currently, the majority of children who come into conflict with the law, especially those brought into the criminal justice system, are sentenced to deprivation of liberty. When children are imprisoned, their rights guaranteed by the Child Protection Law are often not met. Furthermore, due to the limited number of detention centers and juvenile correctional institutions, children are often held in prison with adult prisoners.

This detrimental tendency is a result of the involvement of children in the juvenile criminal justice process, and is caused by the effects of sentencing in the form of stigma.²³ In Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that the drafting of Law No. 11 of 2012 is a replacement for Law No. 3 of 1997 concerning Juvenile Courts which is carried out with the aim of realizing justice that truly guarantees the protection of the best interests of children who come into conflict with the law as the nation's successors. Law No. 11 of 2012 uses the name of the juvenile criminal justice system which is not interpreted as a judicial body as regulated by Article 24 paragraph (2) of the 1945 Constitution. Law No. 11 of 2012 is not a law concerning juvenile justice, because in the considerations for the formation of Law No. 11 of 2012 and also in the general explanation of the law, there is no consideration for the formation of a

²²Herli Antoni, 2024, Asmak Ul Hosnah and Angelica Clara Anasztasia Simanjuntak, Legal Protection for Victims of Sexual Violence Against Children Based on Law No. 12 of 2022 Concerning Criminal Acts of Sexual Violence, *Logika*, Vol. 15, No. 2 October, pp. 235–47.

²³Paulus Hadisuprpto, 2003. Providing Reintegrative Shame as a Non-Penal Means of Addressing Delinquent Behavior in Children (Case Study in Semarang and Surakarta), Dissertation of the Doctoral Program in Law, Diponegoro University. Semarang. P. 369.

juvenile court, there is consideration for the formation of a juvenile criminal justice system (See letter e in the considerations of Law No. 11 of 2012).²⁴

Law No. 11 of 2012 concerning the Juvenile Justice System resulted from an assessment of the ineffectiveness of imprisonment in reducing juvenile criminal activity in Indonesia. The imprisonment system, considered an effort to stop criminal activity, has been ineffective. This is because the public generally perceives sentencing as an opportunity for victims to take revenge on the perpetrator, which is not the case. Beccaria stated that, "the purpose of punishment is to deter persons from committing crimes and not provide social revenge," meaning that the purpose of punishment is to prevent someone from committing crimes, not as a means of societal revenge.²⁵ Beccaria further stated that cruel punishments do not benefit public order and security. According to Beccaria, crime prevention efforts are better conducted through preventative measures rather than criminalization.²⁶

Legal efforts to ensure the full fulfillment of the right to recovery for child victims of sexual violence can be undertaken through a legal approach that prioritizes victim protection, including restitution mechanisms, psychosocial rehabilitation, and legal protection. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence clearly regulates victims' rights, including the right to receive medical, psychological, and social assistance, as well as the right to restitution and compensation.²⁷

Sexual violence can occur due to various reasons, such as the perpetrator's feeling of revenge on the victim, because the perpetrator's feeling of revenge on a woman so that another woman becomes the target of his anger, the victim as compensation for the perpetrator's feelings of pressure or stress over various problems he faces, because of the influence of environmental stimuli such as pornographic films or images, and because of the perpetrator's desire to channel his sexual urges that he can no longer control, also because it is supported by the situation and conditions of the environment as well as the perpetrator and victim that allow rape to be carried out. In every case of rape, at least three things are involved, namely the perpetrator, the victim, the situation and

²⁴Nikmah Rosidah, 2019, *Juvenile Criminal Justice System*, Bandarlampung: Anugrah Utama Raharja, p. 2

²⁵Marwan Effendy, 2014. *Legal Theory from the Perspective of Policy, Comparison, and Harmonization of Criminal Law*, Jakarta: Referensi Pers. P. 85

²⁶Ibid, p. 86

²⁷Intan Amalia Putri, 2024, *Legal Protection for Child Victims of Sexual Violence Based on Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence*, *Journal of Law and Security Studies*, Volume 1, No. 2, P. 97.
<https://ejurnal.ubharajaya.ac.id/index.php/jlss/article/view/3711/2282>

conditions.²⁸ These three factors are inseparable. Each plays a role in contributing to the occurrence of sexual violence. Sexual violence can occur not only due to uncontrollable sexual urges and the perpetrator's need for an outlet, but also due to emotional factors within the perpetrator. Furthermore, sexual violence also occurs due to the perpetrator's role and the victim's position. The perpetrator's role is depicted as a person who fails to control their sexual instincts properly. The perpetrator exploits the victim's carelessness, weakness, and mistakes, directly or indirectly, and their behavior encourages the perpetrator to commit crimes. The victim quickly believes the perpetrator's persuasion, resulting in the victim becoming dependent on the perpetrator's presence.²⁹

The causes of sexual violence against children are a current phenomenon, which seems to be small but these cases occur frequently in society. The factors that can be identified as causes of sexual violence are the threat of relatively light punishment, hormonal changes, psychological changes, IT developments, lifestyle changes, public perceptions that still view sexual violence as taboo, social culture that influences it such as gender discrimination, public perception that considers sexual violence cases a "disgrace" that must be covered up.³⁰ Sexual violence committed by people outside the family is usually perpetrated by neighbors, boyfriends, school friends, playmates and, more recently, social media friends.

In Article 1 paragraph (3) of Law Number 11 of 2012 concerning the Child Justice System, it is stated that the age limit for children experiencing legal conflict is: "Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old, who are suspected of committing a crime."

Based on this, the author observes that there are still obstacles that require serious attention from all parties involved in addressing violence against children. According to the author, there are several theoretical factors that contribute to the inadequate implementation of legal protection for child victims of violence, as explained below:³¹

1. Legal Substance: It is important to emphasize that legal substance, specifically statutory regulations, must be clear and firm. This is necessary to prevent law enforcement from resorting to diverse interpretations, which would undoubtedly promote the upholding of the rule of law. However, if the substance of a

²⁸Wahid, 2001, Protection of Victims of Sexual Violence, Advocacy for Women's Human Rights, Bandung: Pt. Refika Aditama, p. 28.

²⁹Interview, AKP Anggi Eko Prasetyo, Loc.cit.

³⁰Ermaya, 2018, Sexual Violence Against Children in Karawang Regency, Bandung: Dharma Husada Health College, p. 23.

³¹Ibid,

statutory regulation is biased and unclear, it opens up opportunities for law enforcement to interpret it according to their own line of thinking. This could potentially create room for misinterpretation and disrupt the fair implementation of the law. Furthermore, if the law enforcer believes the legal provisions are not regulated in the law, they will naturally seek other legal bases that they believe are more appropriate to apply in the event. Similarly, the Child Protection Law serves as the basis for providing legal protection for child victims of violence. In efforts to protect children legally, harmony or coherence is necessary between various laws and regulations of varying degrees. Because incompatibility between legal regulations can occur, for example, between specific laws and general laws, between laws of a "higher" degree and lower regulations, between previously applicable laws and those currently in force. This can affect the issue of law enforcement in the context of legal protection because the purpose of establishing a regulation is to provide legal certainty, benefit and justice. Therefore, to avoid the occurrence of a regulation that does not apply effectively in society, it is necessary to pay attention to the principles and objectives of the formation of the law itself.

2. Lack of socialization and understanding of the Law on Sexual Violence among law enforcement officers, difficulty in seeking expert information, difficulty in obtaining scientific evidence, differences in understanding and interpretation of the Law on Sexual Violence among law enforcement officers, experts, and the public, lack of adequate facilities and infrastructure, lack of support from the public in providing information and reporting cases, and the persistence of stigma and discrimination against victims of sexual violence, especially children. To overcome these challenges, integrated and synergistic efforts are needed between the government, law enforcement officers, the public, and other relevant institutions. In addition, there is a need for clear and comprehensive regulations on child protection to guarantee and protect children's rights to live, grow, develop, and participate optimally and receive protection from violence and discrimination.³²

In this context, the author highlights the legal regulations between legal regulations in this case Law of the Republic of Indonesia No. 17 of 2016 concerning the second amendment to Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection, the paradigm that is built is that the function of Law of the Republic of Indonesia No. 17 of 2016 concerning the second amendment to Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection is still limited to the realm of action against perpetrators of sexual violence against children, not on preventive efforts or prevention efforts. The principle that a legal instrument must function as an engineering tool, then in the

³²Muthi'ah Lathifah, 2023, Sexual Abuse of Children: Implications for Criminal Law and Child Protection, Journal of Law and Constitutional Studies Vol. 1, No. 4, P. 252 <https://Journal-Stiayappimakassar.Ac.Id/Index.Php/Birokrasi/Article/Download/748/776/2071>

case of Law No. 35 of 2014 concerning child protection, it must focus on legal protection efforts not only limited to action in the practical realm but have a concept that is able to formulate problems fundamentally, How the specific and practical roles of all parties in legal regulations must be involved, starting from the smallest unit of the family, the scope of education, local and central governments. Related to legal protection for child victims of sexual violence crimes has not been implemented well, this can be seen from the rampant cases of sexual violence against children from year to year and in other areas. If the legal substance provides a proper legal basis, law enforcement can proceed optimally. Conversely, if the legal substance is not clear in providing a legal basis, it will open up opportunities for deviations from the rules. Implementation of legal protection for child victims of sexual violence is less than optimal if the legal substance is unclear.³³

4. Conclusion

Protection for children who are perpetrators of sexual violence is that there are several things that must be considered where the trial is declared closed to the public for morality cases, including those who are victims are children in accordance with the provisions of Article 153 paragraph (3) of the Criminal Procedure Code, all law enforcers are required to pay attention to the best interests of children Article 18 of the SPPA Law, Not permitted to use official attributes Article 22 of the SPPA Law, Examination must be accompanied by parents/social workers Article 23 paragraph (2) of the SPPA Law, the identity of the child victim must be kept confidential in news reports in print/electronic media Article 199 paragraph (1) of the SPPA Law, Provision of Legal Protection Article 69A of the SPPA Law. Then the form of legal protection provided to child victims should be in the form of legal assistance, confidentiality of the victim's identity, arrest of the perpetrator with initial evidence, health services, rehabilitation efforts, the right to restitution or compensation, the right to recovery and counseling, assistance at every level of examination, the right to information on the entire process and the right to documents resulting from handling. Therefore, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence provides legal protection for child victims of sexual violence, regulating legal protection mechanisms for child victims, including the right to restitution, rehabilitation, and guaranteed protection during the legal process. However, its implementation still faces various challenges, such as social stigma and a lack of supporting facilities.

³³Interview with AKP Anggi Eko Prasetyo, Loc.cit.

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