

Victims of Child Sexual Violence from a Legal Perspective

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Abstract: *Law enforcement officers give appropriate punishments to perpetrators of sexual violence, so that the rule of law is truly enforced and order is created in society. Sanctions are intended to provide a deterrent effect for perpetrators of sexual violence so as not to repeat their behavior and prevent others from committing the crime because of the threat of severe punishment. The purpose of this study is to find: 1) children who are victims of criminal acts of sexual harassment; 2) the impact of children as victims of crimes of sexual violence; and 3) efforts to tackle crimes of sexual violence against children. The results of the study are as follows: efforts to overcome crimes of sexual violence against children are the role of parents who play an important role in protecting children from the risk of sexual violence; legal care as well as psychological rehabilitation support and psychological services for both children and their parents; and the role of the community to ensure the protection of children; also the role of the State, in the form of rehabilitation, which is an integrated process of treatment activities by restoring the child's condition. Rehabilitation in question is a process of organizing physical, mental, and social rehabilitation activities in an integrated manner so that the child can continue to carry out his social functions and skills in social life.*

Keywords: *Children, Sexual Violence, Legal Protection*

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Abstrak: Aparat penegak hukum memberikan hukuman yang setimpal kepada pelaku kekerasan seksual, agar supremasi hukum benar-benar ditegakkan dan tercipta ketertiban dalam masyarakat. Sanksi dimaksudkan untuk memberikan efek jera bagi pelaku kekerasan seksual agar tidak mengulangi perilakunya dan mencegah orang lain melakukan kejahatan karena ancaman hukuman yang berat. Tujuan dari penelitian ini adalah untuk menemukan: 1) anak yang menjadi korban tindak pidana pelecehan seksual; 2) dampak anak sebagai korban kejahatan kekerasan seksual; dan 3) upaya penanggulangan kejahatan kekerasan seksual terhadap anak. Hasil penelitian sebagai berikut: upaya penanggulangan kejahatan kekerasan seksual terhadap anak adalah peran orang tua yang memegang peranan penting dalam melindungi anak dari risiko kekerasan seksual; perawatan hukum serta dukungan rehabilitasi psikologis dan layanan psikologis bagi anak dan orang tuanya; dan peran masyarakat dalam menjamin perlindungan anak; juga peran Negara, dalam bentuk rehabilitasi, yaitu suatu proses terpadu kegiatan pengobatan dengan memulihkan kondisi anak. Rehabilitasi yang dimaksud adalah suatu proses penyelenggaraan kegiatan rehabilitasi fisik, mental, dan sosial secara terpadu agar anak tetap dapat menjalankan fungsi dan keterampilan sosialnya dalam kehidupan bermasyarakat.

Kata kunci: Anak, Kekerasan Seksual, Perlindungan Hukum

INTRODUCTION

Children are unique individuals who physically and emotionally cannot be compared with adults in their mindset and behavior. Treating a child requires specialization and emotional stability. Children have a great responsibility, and they are the hope for the future of the country and religion. The future of children has a strategic role and has special characteristics and characteristics that ensure their survival in the future. Parenting can take the form of affection, good communication, and an emotional approach. Therefore, parents, families, communities, governments, and the state are obliged to provide space for optimal growth and development of children and protect them.

The United Nations (UN) states in the Convention on the Rights of the Child that there are four basic rights of children that must be respected, namely: a). The right to survive, the right to defend and sustain life (right to life) and the right to the highest standards of health and care; b). The right of protection, namely the rights in the Convention on the Rights of the Child. These include the right to protection from discrimination, violence and neglect of children without families for refugee children; c). The right to growth and development (right to development), namely the right of the child in the Convention on the Rights of the Child, including all forms of education (formal and informal), and the right to guarantee an adequate standard of living, the spirit of the child, mental, moral and social development (the right to standard of living); and d). The right of the child to participate (the right to participation), namely the right to express an opinion on all matters affecting the child (the right of the child to freely express his opinion on all matters affecting the child). It is clear that children are the successors who will be passed on for the future of the country, so the basic rights of children as human beings must be considered and cared for properly. This allows children to grow and develop naturally as individuals with these basic rights.

Article 28B paragraph 2 of the 1945 Constitution stipulates that all children have the right to survival, growth and development, and the right to protection from violence and discrimination.¹ The right of children to obtain legal protection is stated in Article 58 paragraphs 1 and 2 of Law Number 39 of 1999 concerning Human Rights which reads:

1. Every child has the right to obtain legal protection from all forms of physical or mental violence, neglect, ill-treatment, and sexual harassment while in the care of their parents or guardians, or other parties or those who are responsible for such care.
2. In the event that a parent, guardian, or child caretaker commits any form of physical or mental abuse, neglect, treatment in the form of sexual harassment, including rape, and or murder of a child who should be protected, it must be subject to a heavier sentence.

Children become individuals who must be prepared and pay attention to their future, but over time with very rapid social changes have an impact on children's problems in the form of neglect, exploitation, child trafficking, discrimination, violence against children, both physically, psychologically and sexually. This is stated in point c of Law

¹Undang- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (amandemen).

Number 35 of 2014 amendments to Law Number 23 of 2002 concerning Child Protection, that children are buds, potentials, and the younger generation who succeeds the ideals of the nation's struggle, has a strategic role, characteristics and characteristics. so that it must be protected from all forms of inhumane treatment that result in violations of human rights.² Article 1 paragraph 1 explains that a child is someone who is not yet 18 (eighteen) years old, including a child who is still in the womb, and paragraph 2 explains that child protection is all activities to guarantee, protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and respect, as well as obtain protection from violence and discrimination. Based on the existing legal rules, it is very clear that children need to be protected as much as possible in order to avoid crime.³

Based on data from the Indonesian Child Protection Commission (KPAI), the number of sexual abuse and violence against children in Indonesia was recorded in 2013 as many as 23 cases, in 2014 as many as 53 cases and in 2015 as many as 133 cases. According to data obtained by KPAI, violence and sexual abuse against children increased by 100% compared to previous years. In an article published by the Indonesian Pediatrician Association (IDAI) stated that most of the perpetrators of sexual harassment were people who were known to the victim, around 30 of whom were children's families, usually brothers, fathers, uncles or cousins. 60% of abusers are other acquaintances such as "friends" in the family, caregivers or neighbours. About 10% of perpetrators in child sexual abuse cases are people who are not known to the victim.⁴

Sexual crimes against children have a traumatic impact, and the healing process is very long. Psychological trauma to children who are victims of sexual crimes is difficult to erase from children's memories, especially if the perpetrator is still and lives not far from the child's environment. With these conditions, parents become very worried and worried about their safety, especially if they are far from their children, such as when playing outside with their friends or when staying at home without their mother or family.

Sexual crime is a form of violation of decency which is not only a national legal problem of a country but has become a legal problem for all countries in the world or a global problem.⁵ In general, human sexuality can be grouped into three, namely; 1). Biological (physical enjoyment and heredity); 2). Social (sexual relationships, various social rules and various social forms through which biological sex is manifested; and 3). Subjective (individual and shared awareness as the object of sexual desire).⁶

Furthermore, sexual crimes against children as explained by Knudsen that crimes of sexual violence against children are all ranges of sexual acts such as hugging, kissing, exhibitionism, genital touching, oral sex, sexual intercourse with children. The child is

²Undang-Undang Nomor 35 tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 tahun 2002 tentang Perlindungan Anak.

³*Ibid*

⁴Ikatan Dokter Anak Indonesia (IDAI), <http://www.idai.or.id/artikel/klinik/pengasuhan-anak/apa-yang-perlu-diketahui-orang-tua-tentang-pelecehan-seksual-pada-anak>, diakses pada tanggal 3 Maret 2022, Pukul 15.15 WIB.

⁵Sumera M., *Perbuatan Kekerasan atau Pelecehan Seksual terhadap Perempuan*. (2013), hlm. 39.

⁶Wahid & Irfan, *Perlindungan terhadap Korban Kekerasan Seksual Advokasi atas Hak Asasi Perempuan*. Bandung: PT. Refika Aditama, 2001, hlm. 32.

considered unable to express voluntary consent, so any sexual act between an adult and a child is considered a form of sexual abuse or violence even if there is no coercion or physical threat or when the child does not refuse. Sexual violence against children can be carried out by family members.⁷

Regulation of the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 2 of 2011 concerning Guidelines for Handling Children Victims of Violence also formulates the definition of crime and sexual violence against children as forced sexual intercourse against a child.⁸

Sexual crimes against children are when children receive sexual treatment by adults, including seducing children to touch or being touched by their genitals, having sex in all forms, whether genital, oral or sodomy. This violence varies from consensual relationships, sadistic sexual treatment, to the production of pornographic literature. Sexual violence can occur within the family by parents, stepparents, siblings or relatives or outside the home such as friends, neighbors, child caretakers, teachers or strangers. Some children who are sexually abused later in life can be caught up in prostitution or other serious problems when they reach adulthood.⁹

From some of the opinions above, the author can describe those sexual crimes against children are all sexual relations and or those that lead to sexual relations, which are carried out by adults, teenagers or children, against children with or without coercion. All sexual acts committed against children are sexual crimes.

The need for adequate legal protection for victims of sexual crimes is not only a national issue, but also an international issue, therefore this issue needs serious attention. The importance of protecting victims of sexual crimes is serious and can be seen from the establishment of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by the United Nations (UN), as a result of The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Milan, Italy, September 1985. One of its recommendations states: "Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights".¹⁰

When it is related to the protection of victims of sexual crimes, it is to provide protection to victims as one of the realizations of the goals of the Indonesian nation as stated in the preamble of the 1945 Constitution paragraph 4 (four) which reads: "to protect the entire Indonesian nation and the entire homeland of Indonesia and to

⁷Jeffrey S. Nevid, Spencer A. Rathus & Beverly Greene, *Psikologi Abnormal*. Jakarta: Erlangga, 2003, hlm. 227.

⁸Peraturan Menteri Negara Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 2 Tahun 2011 tentang Pedoman Penanganan Anak Korban Kekerasan. hlm. 14.

⁹Kusnandi Rusmil, *Kekerasan dan Penelantaran terhadap Remaja*. Jakarta: Sagung Seto, 2004, hlm. 257.

¹⁰Deklarasi mengenai Prinsip-prinsip Keadilan Dasar Bagi Korban Kejahatan dan Penyalahgunaan Kekuasaan, yang disahkan oleh Resolusi Majelis Umum 40/34, 29 November 1985.

promote welfare. public, educate the nation's life and participate in carrying out world order based on freedom, eternal peace and social justice".

Cases of sexual crimes against children cause the most difficulties in their resolution, both at the stage of investigation, prosecution, and at the stage of making a decision. In addition to the difficulties in the limits above, there are also difficulties in proving such as rape or obscene acts which are generally carried out without the presence of other people.¹¹ It is undeniable, that in cases involving sexual crimes, whether or not it can be revealed, of course, really depends on the participation of the victim to report it to the authorities. Many cases that are not revealed are caused because the victim does not want to report, because of shame and being known by the family or other people, as well as the thought in the victim that he will not get what is expected, namely legal protection, even in the process of being examined in court, the victim can no longer avoid it. become victims of the criminal justice process (victimization). The victim becomes a forgotten person, after the criminal justice process has succeeded in proving the defendant's guilt and the defendant is sentenced by the judge, even though the impact of the sexual crime he experienced greatly affects his mental development, maybe even ongoing trauma.

The problem of sexual violence crimes against children as victims is still there, and even increasing. Victims of sexual violence against children can occur in the family environment, the perpetrators can be fathers or siblings, and the place where it occurs is mostly in the victim's house. This sexual violence has a tremendous impact on the victim and her extended family.¹²

Serious care is needed to provide legal protection to victims of sexual crimes. Indeed, the issue of legal protection and human rights in the context of criminal law enforcement is not an easy task. Many incidents in society show that these two things have not been taken seriously by the government. Basically, sex crime victims are the ones who suffer the most and are not protected. Therefore, if the perpetrator is sentenced to a criminal sentence by the court, the issue of justice should also apply to the victim of a crime, but the condition of the victim seems to be completely ignored.

In real life, children who are victims of human rights violations, especially sexual crimes, are often seen as being violated by individuals or groups. The ratification of several laws and regulations is expected to meet the needs of the community seeking justice, especially for victims of child sex crimes, because these violations create an imbalance between children and their families. Make the victim stop his activities. This is the psychological aspect that causes shock/instability and brings temporary and permanent psychological aspects to the victim. In order for victims to return to their original state, various efforts must be made to recover economically, medically, and psychologically. As stipulated in Articles 5 of Law no. 13 of 2006, the law failed to provide adequate legal protection to victims of sexual crimes. This form of protection does not include victims

¹¹Leden Marpaung, *Kejahatan terhadap Kesusilaan dan Masalah Prevensinya*. Jakarta: Sinar Grafika, 2001, hlm. 81.

¹²Tateki Yoga Tursilarini, *Dampak Kekerasan Seksual pada Anak dalam Perspektif Hak Asasi Manusia*. Balai Besar Penelitian dan Pengembangan Pelayanan Kesejahteraan Sosial (B2P3KS) Kementerian Sosial RI. Jurnal Media Informasi Penelitian Kesejahteraan Sosial, Vol. 41, No. 1, April 2017, hlm. 77-92.

of sexual crimes. Article 5 of the Law on the Protection of Witnesses and Victims explains as follows:¹³

1. A Witness and Victim have the right to:
 - a. Obtain protection for the safety of his personal, family, and property, and be free from threats related to the testimony that he will, is currently, or has given;
 - b. Participate in the process of selecting and determining the form of security protection and support;
 - c. Provide information without pressure;
 - d. Get a translator;
 - e. Free from entangled questions;
 - f. Get information about the progress of the case;
 - g. Obtain information about court decisions;
 - h. Knowing in the event that the convict is acquitted;
 - i. Get a new identity;
 - j. Get a new place of residence;
 - k. Obtain reimbursement of transportation costs as needed;
 - l. Get legal advice; and/or
 - m. Obtain temporary living expenses assistance until the protection period ends.
2. The rights as referred to in paragraph (1) are granted to Witnesses and/or Victims of criminal acts in certain cases in accordance with the decision of the LPSK.

DISCUSSION

The 1945 Constitution which is based on the philosophy and ideology of Pancasila is contained in Paragraph IV of the Preamble to the 1945 Constitution which reads: "Then from that to form the Government of the State of Indonesia which protects the entire Indonesian nation and the entire homeland of Indonesia and to promote the welfare of the Indonesian people. general, educate the nation's life and participate in carrying out world order based on independence, eternal peace and social justice, the independence of the Indonesian nationality is drawn up in a Constitution of the Indonesian State, which is formed in an arrangement of the Republic of Indonesia which is sovereign by the people based on God. The Almighty, just and civilized Humanity, Indonesian Unity and Democracy led by wisdom in deliberation/representation, and by realizing social justice for all of Indonesia". In the opening it is very clear and implied the noble cultural values that have been declared by the founding fathers of the nation. The founders of the nation were able to explore these values, especially philosophical values, both religious philosophy and philosophy of life (Pancasila philosophy). This gives identity and dignity as a civilized nation, as well as having a religious soul and personality.

According to Notonagoro, Pancasila is the philosophical basis of the State of Indonesia, Pancasila is the basis of the philosophy and ideology of the state which is

¹³Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban.

expected to be the way of life of the Indonesian nation as a unifier, a symbol of unity and integrity as well as the defense of the nation and the State of Indonesia. Meanwhile, according to Muhammad Yamin, Pancasila comes from the word *panca* which means five and *sila* which means joint, principle, basis, or regulation of important and good behavior. Thus, Pancasila is the five basics that contain guidelines or rules about important and good behavior. According to Ir. Soekarno, Pancasila is the soul of the Indonesian nation that has been passed down for centuries, which has been hidden for centuries by western culture. Thus, Pancasila is not only the philosophy of the State, but more broadly, namely the philosophy of the Indonesian nation.¹⁴

Pancasila as the basis of the state means that every constitutional element in the Republic of Indonesia must be based on the values of Pancasila, meaning that Pancasila must always be the spirit or power that animates activities in forming the State. The concept of Pancasila as the basis of the State was proposed by Ir. Soekarno in his speech on the last day of the first BPUPKI session on June 1, 1945, whose contents were to make Pancasila the state philosophy or *filosofische grondslag* for the Indonesian state. This proposal was accepted by all members of the court. The results of the trial were then discussed by a small committee or committee 9 and resulted in the formulation of the "Basic Law Preamble Draft" on June 22, 1945, which Muhammad Yamin suggested to name the Jakarta Charter or Jakarta Charter, which contained Pancasila in paragraph IV. The Jakarta Charter was subsequently ratified by the Preparatory Committee for Indonesian Independence (PPKI) as the Preamble to the Constitution, undergoing several changes which coincided with Pancasila being ratified as the basis of the State.¹⁵

The function of Pancasila as the State Foundation, in the five points listed in the 4th paragraph of the Preamble to the 1945 Constitution. So, the explanation of the functions of Pancasila, among others:¹⁶

1. Pancasila as a way of life
Pancasila must be a guide in making decisions, and in dealing with a problem.
2. Pancasila as the soul of the nation
Pancasila must be the soul of the Indonesian nation. Pancasila which is the soul of the nation must be realized in every institution or organization and human being in Indonesia.
3. Pancasila as the nation's personality
The personality of the Indonesian nation is very important as well as the identity of the Indonesian nation. Therefore, Pancasila must be silent in every individual of the Indonesian nation, in order to make Pancasila the nation's personality.
4. Pancasila as a source of law
Pancasila must be the legal source of all applicable laws in Indonesia. Pancasila is the source of all sources of law or legal order for the legal life of the Indonesian

¹⁴Ronto, *Pancasila sebagai Ideologi dan Dasar Negara*. Jakarta: PT. Balai Pustaka, 2012, hlm. 1.

¹⁵Maulana Arafat Lubis, *Pembelajaran PPKn, Teori Pengajaran Abad 21 di SD/MI*. Yogyakarta: Samudra Biru, 2018, hlm. 40-41.

¹⁶Irwan Gesny & Yun Hendri, *Buku Ajar Pendidikan Pancasila*. Ponorogo: Uwais Inspirasi Indonesia, 2018, hlm. 4-5.

nation, so it must be interpreted that Pancasila is the source of law for unwritten law and the source of written law in the legal life of the Indonesian nation.

5. Pancasila as the ideals of the nation

Pancasila, which was made as the basis of the state, was also made to be the goal of the state and the ideals of the nation. We as the Indonesian people must dream of a country that has God Almighty, has a high sense of humanity, is united and solid, always consults and also the emergence of social justice.

Article 28 B paragraph 2 of the 1945 Constitution mandates that every child has the right to survival, growth and development and the right to protection from violence and discrimination. Furthermore, the right of children to obtain legal protection is also stated in Article 58 paragraphs 1 and 2 of Law Number 39 of 1999 concerning Human Rights which reads¹⁷:

1. Every child has the right to obtain legal protection from all forms of physical or mental violence, neglect, ill-treatment, and sexual harassment while in the care of their parents or guardians, or other parties or those who are responsible for such care.
2. In the event that a parent, guardian, or child caretaker commits any form of physical or mental abuse, neglect, treatment in the form of sexual harassment including rape, and/or murder of a child that should be protected, it must be subject to a heavier penalty.

Furthermore, Article 65 of Law Number 39 of 1999 confirms that every child has the right to obtain protection from sexual exploitation and abuse, kidnapping, child trafficking, as well as from various forms of abuse of narcotics, psychotropic substances, and other addictive substances.

Law Number 35 of 2014 amendments to Law Number 23 of 2002 concerning Child Protection in Article 1 explains; 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 protection from violence and discrimination.

The United Nations (UN) in the convention on the rights of the child, states that there are four basic rights of children that need attention, namely:¹⁸

1. The Right to Survival, namely the rights to preserve and maintain life (The Right of Live) and the right to obtain the highest standard of health and the best possible care;
2. The right to protection (Protections Rights), namely the rights in the convention on children's rights which include the right to protection from discrimination, violence and neglect for children who do not have families for refugee children;
3. The right to development (Development Rights), namely the rights of children in the Convention on the Rights of the Child which includes all forms of education

¹⁷Undang-Undang Nomor 39 tahun 1999 tentang Hak Asasi Manusia

¹⁸Keputusan Presiden Nomor 36 Tahun 1990 tentang Pengesahan *Convention on the Rights of the Child* (Konvensi tentang Hak-hak Anak).

(formal and non-formal) and the right to achieve an adequate standard of living for physical, mental, spiritual, moral and social development children (the rights of standard of living); and

4. The right to participate (Participation Rights), namely the rights of children which include the right to express opinions in all matters affecting the child (the rights of a child to express her/his views freely in all matters affecting the child).

In the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by the United Nations (UN), as a result of The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Milan, Italy, September 1985. One of the recommendations stated: "Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights". (Perpetrators or those responsible for an unlawful act must provide restitution to the victim, family or guardian of the victim. Such restitution is in the form of returning property rights or compensating for losses suffered by the victim, loss of costs for the negligence he has committed, causing the victim, which is a stipulation of law as a form of service and fulfillment of rights).¹⁹

Furthermore, according to the experts define legal protection as follows;

1. Satjipto Raharjo stated that legal protection is providing protection for human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is various legal remedies that must be provided by the law. law enforcement officers to provide a sense of security, both physically and mentally from interference and various threats from any party.²⁰
2. Barda Nawawi Arief stated that legal protection for children can be interpreted as an effort to protect the law against various fundamental rights and freedoms of children as well as various interests related to children's welfare. So, the issue of legal protection for children covers a very broad scope.²¹
3. Philipus M. Hadjon stated that legal protection is the protection of the dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness.²²

Indonesia as a legal state based on Pancasila must provide legal protection for its citizens in accordance with Pancasila. Therefore, legal protection based on Pancasila

¹⁹Deklarasi mengenai Prinsip-prinsip Keadilan Dasar Bagi Korban Kejahatan dan Penyalahgunaan Kekuasaan (1985), yang disahkan oleh Resolusi Majelis Umum 40/34, 29 November 1985.

²⁰Satjipto Raharjo, *Penyelenggaraan Keadilan dalam Masyarakat yang sedang Berubah*. Jurnal Masalah Hukum. 1993, hlm. 74.

²¹Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*. Bandung: PT. Citra Aditya Bakti, 1998, hlm. 153.

²²Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat Indonesia*. Surabaya: PT. Bina Ilmu, 1987, hlm. 1-2.

means the recognition and protection of human dignity on the values of divinity, humanity, unity, deliberation, and social justice. These values give birth to the recognition and protection of human rights in their form as individual beings and social beings in a unitary state that upholds the spirit of kinship in order to achieve mutual prosperity.²³

According to Simons, the elements of a crime (*Strafbaar Feit*) are: human actions (positive or negative, doing or not doing or letting). Threatened with a criminal offense (*Staatbaar Gesteld*) against the law (*Onrechtmatig*) committed in error (*Met Schuld in Verband Stand*) by a person who is capable of being responsible (*Toerekeningsvatbaar Persoon*). Simons also mentions that there are objective and subjective elements of a crime (*Strafbaar Feit*). As for formulating the main points of criminal acts, there are three characteristics. *Wederrechtjek* (breaking the law), *Aan Schuld te Wijten* (has been done intentionally or unintentionally), and *Strafbaar* (can be punished).

From a legal perspective, especially the criminal law, the conception of violence is regulated definitively in Article 89 of the Criminal Code, namely making people faint or helpless is the same as using violence. Meanwhile, violence that is carried out jointly against people or goods is regulated in Article 170 of the Criminal Code. Sexual violence is the practice of sexual relations carried out by means of violence, contrary to religious teachings and values and violating applicable laws. Violence is shown to prove that the perpetrator has strength, both physical and non-physical. And his power can be used as a tool to carry out his evil efforts.²⁴

Sexual violence against children is the involvement of children in sexual activities, for which they themselves do not fully understand, or are unable to give consent. Sexual violence is characterized by sexual activity between children and adults or other children. The activity is intended to provide satisfaction for the person. Sexual violence includes sexual exploitation in prostitution or pornography, forcing children to see sexual activities, exposing the genitals to children for the purpose of sexual satisfaction, sexual stimulation, touching, forcing children to touch other people's genitals, sexual intercourse, rape, sexual relations carried out by other people. who have blood relations (incest), and sodomy.²⁵

Sexual harassment and sexual violence or rape are incidents of sexual violence perpetrated by men against women because they are motivated by socio-cultural values in society which are more or less gender biased. Sexual harassment is not always an act of rape or sexual assault. Forms of sexual harassment can take various forms: ranging from simply kissing a woman who is walking, looking with eyes as if investigating every curve of the body, groping to sensitive body parts, showing pornographic images, and so on to other forms of sexual violence in the form of sexual harassment. rape.

At first, the term child abuse originated and became known from the medical world. In 1946, Caffey, a radiologist, reported a case of injury in the form of clinical

²³*Ibid*, hlm. 83-84.

²⁴Huraerah, *Kekerasan terhadap Anak: Fenomena Masalah Sosial Kritis di Indonesia*. Jakarta: Nuansa, 2008, hlm. 35.

²⁵Depkes RI, *Pedoman Rujukan Kasus Kekerasan terhadap Anak bagi Petugas Kesehatan*. Jakarta: Departemen Kesehatan Republik Indonesia, 2007, hlm. 78.

symptoms such as multiple long bone fractures in children or infants accompanied by subdural hemorrhage without knowing the cause.²⁶

Child abuse is an event of physical, mental or sexual harm that is generally perpetrated by persons who have responsibility for the welfare of the child. The clearest examples of acts of violence experienced by children are beatings or physical attacks repeatedly until there are cuts or scratches. However, it should be realized that child abuse is actually not only in the form of beatings or physical attacks, but can also take the form of various forms of exploitation through, for example, pornography and sexual assault, giving children inappropriate food or malnutrition, neglecting education. and health, and violence related to medical (medical abuse).²⁷

Sexual violence is not only limited to things that are physical in nature, but also includes many other behaviors, such as psychological abuse and humiliation, so when talking about sexual violence it must touch the core of violence and coercion, not only violent and oppressive behavior. If sexual violence is only defined narrowly as violent and oppressive behavior, don't be surprised if many incidents of sexual violence go unpunished. Many rape suspects escape prosecution only because "the victim is accused of being a party to the enjoyment of the cursed event that befell her."

A criminal act which can be committed by several people with a share of each person in carrying out the act and its nature is different and varied. This can be seen from their participation in carrying out these acts where their position can be as perpetrators or assistants in the criminal acts committed. By looking at this, it is possible to expand the punishment for acts in several cases, especially against more than one perpetrator and this is known as an inclusion offense (*Deelneming*).

There are subsystems in dealing with children's crimes, all of which are related to a single unit that transforms inputs into expenditures. These subsystems are the Police, the Prosecutor's Office, and the Correctional Institution. The legal protection of children in the criminal justice process is carried out from the level of investigation, investigation, prosecution, examination to the decision.²⁸

The existence of these two forms, in this case it is necessary to study how the relationship between actors with one another so that it is clear in determining each other's mistakes. In determining the position of the perpetrators of criminal acts that are carried out jointly, four types of forms in the inclusion offense can be used, namely participating, ordering to do, recommending to do, and helping to do it. As for the four types of participation, when it is contextualized with other forms of criminal acts that are carried out together, which in the end obtains a clarity on the relationship and position of the perpetrators, especially when faced with a large number of perpetrators, it is not clear how much.²⁹

²⁶Suyanto, *Masalah Sosial Anak*. Jakarta: Kencana, Prenada Media Group, 2010, hlm. 24.

²⁷*Ibid*, hlm. 26.

²⁸Novi E. Baskoro, *Rekonstruksi Hukum terhadap Anak Penyalahguna Narkotika dalam Konteks Sistem Peradilan Pidana*. Bandung: PT. Refika Aditama, 2014, hlm. 65.

²⁹R. Soesilo, *Kitab Undang-Undang Hukum Pidana*. Bogor: Politeia, 2006, hlm. 28.

What is meant by violence is a physical act by using force or body strength that is large enough and aimed at a person, which causes that person to become powerless.³⁰ While threats of violence are threats of physical violence directed at people, which are basically physical acts, which physical actions can be in the form of preparatory actions for a major physical act or greater in the form of violence, which will and may soon be carried out/realized later if the threat does not produce the desired result.³¹

The act of coercion (*Dwingen*) is an act directed at another person by suppressing the will of another person that is contrary to the will of the other person, so that the will of the other person accepts the will of the person who suppresses it or is the same as his own will. The means of coercion here are limited to two ways, namely violence (*Geweld*) and threats of violence (*Bedreiging Met Geweld*).³² What is meant by deliberately (*Opzet*) is the same as *Willens en Wetens* (willed and known) which is a conscious will aimed at committing certain crimes.³³

In dealing with children as perpetrators of criminal acts, law enforcers must always pay attention to the conditions of children who are different from adults. The nature of children as individuals who are still unstable, the future of children as national assets, and the position of children in society who still need protection can be used as the basis for finding an alternative solution how to prevent children from a formal criminal justice system, placing children in prison, and stigmatizing of the child's position as a prisoner.

One solution is to divert or place perpetrators of child crimes out of the criminal justice system. This means that not all problems with juvenile delinquent cases must be resolved through formal justice channels, and provide an alternative for settlement with a justice approach in the best interests of the child and by considering justice for the victim, which is called the restorative justice approach.

In the view of restorative justice, the meaning of crime is basically the same as the view of criminal law in general, namely attacks on individuals and society and social relations. However, in the restorative justice approach, the main victim for the occurrence of a crime is not the State, as in the current criminal justice system. Therefore, crime creates an obligation to fix the damaged relationship due to the occurrence of a crime. Meanwhile, justice is defined as the process of finding solutions to problems that occur in a criminal case where the involvement of victims, communities and perpetrators is important in efforts to repair, reconcile and guarantee the continuity of these repair efforts.³⁴

Handling sexual violence against children, there needs to be a synergy between families, communities and the state. Sexual Violence Against Children, in handling cases of sexual violence against children should be holistic and integrated. All sides need

³⁰Adami Chazawi, *Kejabatan terhadap Harta Benda*. Malang: Bayumedia, 2021, hlm. 32.

³¹Adami Chazawi, *Tindak Pidana mengenai Kesopanan*. Malang, Biro Konsultasi & Bantuan Hukum Fakultas Hukum Universitas Brawijaya, 2007, hlm. 61.

³²*Ibid*, hlm. 59.

³³Andi Hamzah, *Asas-Asas Hukum Pidana di Indonesia & Perkembangannya*. Medan: PT. Softmedia, 2010, hlm. 145.

³⁴Abdussalam & Adri Desasfuryanto, *Hukum Perlindungan Anak*. Jakarta: PTIK, 2016, hlm. 39.

improvement and handling, both from the medical side, the individual side, the legal aspect (in this case there are still many weaknesses), as well as social support.

Parents play an important role in protecting children from threats of sexual violence. Parents must be really sensitive if they see unusual signals from their children. However, not all victims of sexual violence will show signs that are easily recognizable, especially if the perpetrator takes a persuasive approach and convinces the victim that what happened between the perpetrator and the victim is normal.

Parents (not perpetrators of violence) are very helpful in the adjustment and recovery process for children after the sexual violence incident. After an incident of sexual violence that has occurred, parents need the opportunity to deal with their feelings about what happened and adjust to the major changes that have occurred. In addition, parents need to regain confidence and feelings to be able to control the existing situation. The recovery process of parents is closely related to the resilience of parents as individuals and also the resilience of the family.

Handling sexual violence against children requires the participation of the community, taking into account aspects of prevention involving residents and also involves children, with the aim of providing protection to children at the grassroots level. The involvement of children is needed as a reference to detect cases of violence they have experienced. At a minimum, children are taught to recognize, reject and report potential threats of violence.

The state has "allowed" the emergence of sexual violence around children, therefore, the role of the state is certainly the greatest in handling sexual violence against children. Because, in essence, the state has the ability to shape the readiness of individuals, families and communities. The state, in this case the government, is the party who is fully responsible for the benefit of its people.

With regard to handling children as victims of sexual violence, the approach to child protection that needs to be carried out must be system-based. A systems-based child protection approach aims to strengthen an environment that protects children from anything harmful. The system-based child protection approach is an approach that emphasizes the responsibility or obligation of the state as the primary duty bearer in providing services for the fulfillment of children's rights and child protection. The state recognizes children as rights holders and has the right to protection and is the responsibility of the state for the welfare of children.

Criminal Acts and Sanctions for Violence committed against children according to Law Number 35 of 2014 concerning Child Protection. Law No. 35 of 2014, which is about Child Protection, which provides legal protection for children's rights, especially for children who are victims of violent crimes. Article 1 of Law no. 35 of 2014 concerning child protection provides an understanding of child protection, namely 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 protection from violence and discrimination.

Furthermore, in Article 33 of Law no. 35 of 2014 concerning Child Protection also regulates the revocation of custody rights for parents who commit crimes of violence against children in the family, namely³⁵:

1. In the event that parents and children's families are unable to carry out the obligations and responsibilities as referred to in Article 26, a person or entity law that meets the requirements can be appointed as the guardian of the child concerned;
2. To become guardian of the child as referred to in paragraph (1) is carried out through a court order;
3. The guardian appointed as referred to in paragraph (2) must have similarities with the religion adopted by the Child;
4. The guardian as referred to in paragraph (2) is responsible for the child and is obliged to manage the property of the child concerned for the best interest of the child;
5. Further provisions regarding the terms and procedures for appointing a Guardian as referred to in paragraph (1) shall be regulated by a Government Regulation. If the judge imposes an additional crime of revocation of child custody against parents as perpetrators of criminal acts of violence against children in the family, the judge must also determine the time limit or duration of revocation of child custody, in other words parents have the right to regain child custody through a court order.

Legal protection against sexual violence against children is regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 15 letter f of Law Number 35 of 2014 explains that every child has the right to obtain protection from sexual crimes. Articles 21 to 26 explain that the state, government, community, family, and parents or guardians play a role in the implementation of child protection. The prohibition of committing acts of sexual violence against children is regulated in Article 76 letter d which explains that everyone is prohibited from committing violence or threatening children. Article 76 letter e also explains that everyone is prohibited from using coercive violence, tricking, committing a series of lies, or persuading children to commit immoral acts.

Sexual violence against children is also regulated in the Criminal Code (KUHP), Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 3 of 2002 concerning Child Protection, Law Number 23 of 2004 concerning the Elimination of Domestic Violence (KDRT), Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Government Regulation Number 70 of 2020 concerning Procedures for the Implementation of Chemical Castration, Installation of Electronic Detection Devices, Rehabilitation and Announcement of Identity of Perpetrators of Sexual Violence against Children. Protection from acts of sexual violence against children in Indonesia aims to enable children to grow and develop optimally.

³⁵Undang-Undang No. 35 Tahun 2014 tentang Perlindungan Anak

Legislation that regulates legal protection for children does not reduce the occurrence of sexual violence problems in Indonesia. Sexual violence against children still occurs in many places, both in cities and in villages. Sexual violence against children in Indonesia does not only occur in areas prone to violence, but also occurs in families and schools. Sexual violence threatens the safety of children in Indonesia who are in a very vulnerable position in almost all social areas.

The high number of cases of sexual violence against children illustrates the government's lack of attention. The challenge faced in protecting against acts of violence against children in Indonesia is realizing the fulfillment of children's rights and keeping children away from the threat of deprivation at the same time. Sexual violence against children is a serious violation of human rights. Sexual violence against children must be considered as an extraordinary crime because the damage caused has threatened the future of the nation's generation. Sexual violence against children has damaged the future of the country.

The development of the mind and human nature is a challenge in today's modern times. There are physical developments, thoughts or human nature that lead to positive and negative directions. Negative thoughts and human traits that are very concerning can lead to acts of sexual violence against children. Sexual violence against children is a very inhumane behavior. Children are human beings who have limitations and must get protection from all elements of society and applicable laws.

The Deputy for Child Protection at the Ministry of Women's Empowerment and Child Protection revealed that from January to July 31, 2020 there were recorded 4,116 cases of violence against children in Indonesia. There were 2,556 victims of sexual violence, 1,111 victims of physical violence, and 979 victims of psychological violence. Sexual violence against children is a serious problem and threatens the future of the nation. Child victims of sexual violence will receive physical and psychological impacts. The problem of sexual violence against children also has an impact on society. Cases of sexual violence against children show that the fulfillment of children's rights to protection from violence has not been running properly.

The low quality of child protection in Indonesia has drawn criticism from various elements of society. The government's task should be to provide legal protection to children in order to be able to obtain guarantees for their survival and livelihood as part of human rights. Children also have an existence in life and humanity, but the rights possessed by children have not been fully fulfilled. In reality, children continue to be exploited either economically into child labour, street children, or sexual exploitation. Public awareness and law enforcement officers are needed to protect children's rights. Sexual violence becomes more difficult to deal with and address because victims do not consistently fight for their rights in court. Aspects of sexual violence are always associated with morality discourse so that what the victim does will always look wrong and less alert. The impact of sexual violence against children is exacerbated by the existence of a victim blaming culture that places the victim in the position of being responsible for everything

that happens to him. Sexual violence can harm victims in getting justice before the law because of the moral intimidation they receive.³⁶

CONCLUSION

Sexual violence against children is when someone uses a child to get sexual pleasure or satisfaction. It is not limited to having sex only, but also acts that lead to sexual activity against children, such as touching the child's body sexually, whether the child is wearing clothes or not; all forms of sexual penetration, including penetration into the child's mouth using objects or body parts; make or compel a child to engage in sexual activity; intentionally engaging in sexual activity in the presence of children, or not protecting and preventing children from witnessing sexual activities carried out by others; create, distribute and display images or films containing scenes of children in indecent poses or acts; and showing children, pictures, photos or films that show sexual activity.

The concept of legal protection for child victims of sexual crimes according to positive law must be based on Pancasila in providing legal protection for its citizens. Therefore, this legal protection will give birth to the recognition and protection of human rights in their form as individual beings and social beings, in a unitary state that upholds the spirit of kinship in order to achieve community welfare.

Impact of Children as Victims of Sexual Violence including: a). Psychological Impact, victims of sexual violence will experience deep trauma, besides the stress experienced by victims can interfere with brain function and development; b). Physical Impact, sexual violence against children is a major factor in the transmission of sexually transmitted diseases (STDs); and c). Social Impact, victims of sexual violence are often ostracized in social life, something that should be avoided because victims certainly need motivation and moral support to get back up to live their lives.

Efforts to Overcome Criminal Acts of Sexual Violence Against Children under Indonesian Criminal Law containing: a). The Role of Parents, Parents play an important role in protecting children from the threat of sexual violence; b). The role of the community is the handling of sexual violence against children, there is a need for community participation, taking into account aspects of prevention that involve citizens and also involve children, which aims to provide protection to children at the grassroots level; and c). The role of the state, is that medical rehabilitation is a process of integrated treatment activities by restoring the physical condition of the child, child victim and or child witness.

Repressive legal protection takes the form of: a). The provision of restitution and compensation aims to restore the loss suffered by the victim, both physically and psychologically, as well as reimbursement for the costs incurred as a result of the victimization; b). Counseling is given to children as victims of rape who have experienced trauma in the form of rehabilitation which aims to restore the psychological condition of

³⁶E.P. Wulandari & H. Krisnani, *Kecenderungan Menyalahkan Korban (Victim-Blaming) dalam Kekerasan Seksual terhadap Perempuan sebagai Dampak Kekeliruan Atribusi*. Social Work Journal, 10 (2), 2020, hlm. 187-197.

the original victim; c). Medical services or assistance, provided to victims who suffer medically as a result of criminal acts such as rape, which result in physical suffering; and d). System-Based Approach. The components in the protection of children based on the UNICEF system include: 1). Social Welfare System for children and families. This system aims to prevent the occurrence and recurrence of abuse, violence, neglect and exploitation of children through increasing the capacity of families who are responsible for achieving child welfare and protection; 2). A justice system that complies with international standards. The judicial system here related to the legal framework and legislation needs to be improved and in accordance with international standards; and 3). Mechanisms to encourage appropriate behavior in society.

Legal protection for child victims of sexual crimes can be done by providing children's rights in terms of access to the fulfillment of the right to obtain health services and social security in accordance with their physical, spiritual and social needs as an effort to restore the condition of children as victims of sexual crimes who have trauma. long-term. Child victims of sexual crimes get legal protection in terms of providing legal assistance, rehabilitation and prevention.

Children receive preventive protection from the state and society, but the principles of child protection have not been implemented properly, in fact there are still many children who have not been protected from various forms of violence and exploitation and are still living neglected and neglected. do not get the opportunity to get a proper, let alone adequate education. The obstacles in implementing Law Number 35 of 2014 are positive law in Indonesia which has tried to include various rules to protect the interests of children, both on the basis of vulnerability or the maintenance of fundamental rights. In an effort to protect children, various international conventions and regulations have been adopted but their implementation has not been maximized.

In carrying out legal protection for children as victims of criminal acts of sexual violence, it should be carried out more optimally. In the process of investigating the police must work more carefully so that no evidence and evidence is forgotten so that the victim does not suffer any loss of her rights as a victim. The Police are also expected to be able to minimize the obstacles that occur in providing legal protection. In addition, the government should provide more facilities and budget for children who are victims of crime so that children's safety can be guaranteed. Cooperation between the police and private institutions and outside the police is expected to continue to be improved.

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