

# **LEGAL PROTECTION FOR CHILDREN WITH INTELLECTUAL DISABILITIES VICTIMS OF SEXUAL VIOLENCE IN THE INDONESIAN CRIMINAL LAW SYSTEM**

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## **Abstract**

Children with Disabilities who are often victims of sexual violence are children with intellectual disabilities because of their helplessness and are often categorized as incapable of the law. Intellectual Disability is a condition in which a person is born with a low intelligence or IQ below average so that he does not have the ability to carry out daily activities. Rules regarding the prohibition of committing criminal acts of sexual violence against Children with Disabilities are regulated in Law No. 35 of 2014 concerning Child Protection and Law No. 8 of 2016 concerning Persons with Disabilities. The formulation of the problem in this study is How to Protect Children with Intellectual Disabilities Victims of Sexual Violence. From these problems, the research wants to find out the form of legal protection and the form of restoration of rights for children with intellectual disabilities who are victims of sexual violence. The research method uses a Qualitative Research Approach with the Type of Normative Juridical Research by using



secondary data sources, data collection techniques using literature studies. Test the validity of the data using the data triangulation technique. Data analysis by means of data collection, data reduction, data presentation and conclusion drawn. The results of the study show that legal protection for children with intellectual disabilities has actually been regulated in Indonesian Laws and Regulations. However, there are still obstacles in law enforcement, coordination between institutions, and the fulfillment of special needs for children with intellectual disabilities that are still not in accordance with laws and regulations. The reality that many children with disabilities do not receive legal assistance and language interpreters in the legal process is not in accordance with the principles of justice regulated in the law, including Law Number 35 of 2014 concerning Child Protection and Law Number 8 of 2016 concerning Persons with Disabilities which emphasizes the importance of justice for all parties without discrimination.

### Keywords

Intellectual Disabilities; Child; Sexual Violence; Legal Protection.

## Introduction

Children are a gift and mandate from God Almighty that must be maintained because in them are inherent dignity, dignity and rights that we must uphold. Children are seen from the perspective of the life of the nation and state, are the potential and the next generation of the nation who play a strategic role in providing a guarantee of extension for the nation and state in the future. Therefore, every child has the right to survive, grow, and develop, participate and get optimal protection from all forms of violence and discrimination. Children's human rights are part of human rights that are naturally <sup>1</sup>(*inherent*) in themselves from birth and without these rights, humans cannot grow and develop completely. Human Rights are basic rights inherent in human beings, given by God so that these rights cannot be taken away or lost, and must be respected and maintained by the state and laws for honor and protection. This has been enshrined in Article 28b paragraph 2 of the 1945 Constitution, which reads "Every child has the right to survival, growth, and development and the right to protection from violence and discrimination".<sup>2</sup>

Indonesia has ratified the Convention on the Rights of the Child based on the Decree of the President of the Republic of Indonesia Number 36 of 1990 concerning the Ratification of the Convention on the Rights Of The Child (*Convention on the Rights of the Child*) where this ratification is a tangible manifestation of the state's commitment to providing protection and fulfillment of rights for children from various existing problems. Sexual violence against children

<sup>1</sup> Anis Widyawati et al., "Covid-19 and Human Rights: The Capture of the Fulfilment of Rights During the Covid Outbreaks," *Unnes Law Journal* 6, no. 2 (2020): 259–86, <https://doi.org/10.15294/ulj.v6i2.42289>.

<sup>2</sup> Rahayu, *Human Rights Law*, ed. Nur Cahyadi (Semarang: Diponegoro University Press, 2015).

is a serious crime that can damage the growth and development of children both physically, psychologically, and emotionally so that it needs to receive special attention considering the consequences caused, namely causing children to experience traumatic trauma that is difficult to eliminate and prolonged.<sup>34</sup>

Sexual violence now does not only occur in adult women and children under normal conditions, this situation is even more complex when the victim is a child with disabilities, meaning that age and physical and psychological conditions are no longer a problem for perpetrators of sexual violence. Referring to Article 1 paragraph (1) of Law Number 8 of 2016 concerning Persons with Disabilities, what is meant by "persons with disabilities is any person who experiences physical, intellectual, mental, and/or sensory limitations for a long period of time who in interacting with the environment may experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights". Children with disabilities are often the main target by perpetrators of sexual crimes because perpetrators think that these people with disabilities are weak and legally flawed. Their specificity certainly causes polemics regarding sexual violence against children with disabilities to be difficult to detect because limited access to information on sex and sexuality education causes the child to most likely not realize that they have become victims of sexual violence.<sup>56</sup>

The type of disability that experiences the most sexual violence is intellectual disability. People with intellectual disabilities have limitations in cognitive function and mental development. This can be seen from one of the cases of sexual violence in the form of molestation obtained by the author where this case occurred in November 2023 in Semarang City which was carried out by a widower baker, Rozi (pseudonym), 51 years old, molesting two Children with Intellectual Disabilities who are siblings, namely Gloria and Carine (pseudonym), who are each still 11 years old. Based on Article 5 Paragraph 3 letter a Children with disabilities have the right to "obtain special protection from discrimination, neglect, harassment, exploitation, as well as violence and sexual crimes"; The rise of cases of sexual violence against children with disabilities is inseparable from the weak law enforcement and the softness of the threat of punishment. The existence of a difficult and long legal process is due to the lack of understanding of the condition of children with intellectual disabilities among law enforcement officials. There are cases that are often stopped due to lack of evidence, the absence of witnesses and witness statements of victims because of people with disabilities so that they are considered not convincing enough. Special attention to children with intellectual

<sup>3</sup> Muhammad Harun and Briliyan Erna Wati, *Juvenile Criminal Law*, ed. Junaidi Abdillah, Print 1 (Semarang: CV. Rafi Sarana Perkasa, 2021).

<sup>4</sup> joko Susanto and I.S. Utari, "CHILDREN AS VICTIMS OF SEXUAL VIOLENCE COMMITTED BY PARENTS: A CRIMINOLOGICAL PERSPECTIVE," *Journal of Law and Legal Reform* 1, no. 2 (October 21, 2019): 35–368.

<sup>5</sup> A.A. Kerslake et al., "Criminalisation of Sex with Disabled People with Cognitive Impairments in Commonwealth Countries," *Source: The International Journal of Disability and Social Justice* 3, no. 2 (2023): 4–25.

<sup>6</sup> E.R. Itasari, "Legal Protection for Persons with Disabilities in West Kalimantan," *Integralistik* 31, no. 2 (2020): 70–82.

disabilities who are victims of sexual violence is a form of providing legal protection. The existence of these cases needs to be accompanied by the provision of maximum legal protection to realize welfare by providing guarantees for the fulfillment of their rights without discriminatory treatment. The reality is that there are still many children with intellectual disabilities who do not get their rights in full, such as not getting legal assistance and also a translator or linguist companion. The implementation of legal protection for persons with intellectual disabilities needs to be well realized in order to ensure the realization of rights such as freedom from negative prejudice, obtaining justice and legal protection in accordance with the needs of disabilities, as well as freedom from discrimination to avoid various crimes committed by perpetrators of sexual violence.<sup>78</sup>

Based on the above background, the formulation of the problem in this study is:

1. How is the Legal Protection of Children with Intellectual Disabilities Victims of Sexual Violence in Indonesian Criminal Law?.
- 2.

## Method

The research approach used in this study is a qualitative approach with a normative juridical research method, namely legal research that looks at the law from other angles other than its application or practicality, because the purpose of the research is to examine legal norms related to the protection of children with intellectual disabilities, victims of sexual violence who are relevant. The type of data source in this study uses secondary data, namely data obtained through related laws and regulations. Secondary data can be in the form of legal materials that include primary legal materials, namely in the form of laws and regulations, secondary legal materials, namely in the form of textbooks related to the material being researched, journals, expert opinions, and legal cases and tertiary legal materials are legal materials that show and provide explanations for primary and secondary legal materials such as large Indonesian dictionaries, Encyclopedias, magazines, articles on the internet and other materials that are like scientific works such as books on legal research methods. The data collection technique is carried out by literature study, using triangulation of data sources, namely by comparing data and information obtained from various literature sources including laws and regulations, books, and previous research journals. Data analysis is used as a process to compile and further analyze in a structured and systematic manner with the stages of data collection, data reduction, data presentation, and conclusion drawn.<sup>91011</sup>

<sup>7</sup> Nikmah Rosidah, *The Juvenile Criminal Justice System* (Bandar Lampung: Anugrah Utama Raharja, 2019).

<sup>8</sup> Eko Nurisman, "Minutes on the Challenges of Law Enforcement of Sexual Violence Crimes After the Birth of Law Number 12 of 2022," vol. 4, 2022.

<sup>9</sup> Moleong J. Lexy, *Qualitative Research Methodology* (Bandung: PT. Remaja Rosdakarya, 2016).

<sup>10</sup> Lexy J Moleong, *Qualitative Research Methodology* (Bandung: PT. Remaja Rosdakarya, 2007).

<sup>11</sup> Lexy J Moleong, *Qualitative Research Methodology* (Bandung: PT. Remaja Rosdakarya, 2004).

## Results and Discussion

### 1. Legal Protection for Children with Intellectual Disabilities Victims of Sexual Violence in Indonesian Criminal Law

The law is a rule that must be enforced, in which if anyone violates the meal, sanctions will be imposed. Creating an atmosphere of legal relations between legal subjects that is comfortable, harmonious, balanced and fair is the function of law as one of the instruments or regulators and protection. According to Satjipto Raharjo, Legal protection is an effort to protect a person's interests by allocating a human right to him or her power to act in the context of his interests. The goal of the law is achieved when each subject or individual receives the maximum possible rights and fulfills all kinds of obligations in accordance with applicable regulations. Legal protection for children means all efforts to create conditions where children can carry out all forms of their rights and obligations for the physical, mental, and social development of children. Child protection is a manifestation of justice in a society, so child protection must be pursued in various fields of state and community life. The law itself is a guarantor of legal protection, Arif Gosita stated that legal certainty needs to be sought for the sustainability of child protection activities and prevent abuse that brings unwanted negative consequences in the implementation of child protection.<sup>121314</sup>

Children need to get serious attention because they are the most vulnerable group to obtain crime and even often become victims of sexual violence because children are considered weak, do not dare to speak up and are easily influenced. Sexual violence is any act that refers to sexual acts against women without caring about the relationship between the perpetrator and the victim. Sexual violence against children can result in various adverse effects, namely on physical conditions, prolonged trauma, death, psychological losses, developmental disorders, and deprivation of rights. This sexual violence can be in the form of various forms of variation such as rape, molestation, degrading the victim and so on. The Criminal Code stipulates several acts that fall into the category of sexual violence, namely:<sup>1516</sup>

- a. "Acts of damaging public decency (Articles 281, 283, 282 bis)";
- b. "Adultery (Article 284)";
- c. "Rape (Article 285)";

<sup>12</sup> Ony Rosifany, "Legal Provisions for the Crime of Obscenity" 5, no. 2 (2020).

<sup>13</sup> Satjipto Rahardjo, *Law*, ed. Awaludin Marwah (Bandung: PT. Citr Aditya Bakti, 2014).

<sup>14</sup> Maidin Gultom, *Legal Protection of Children*, ed. Dinah Sumayyah, Revised Edition (Bandung: PT. Refika Aditama, 2014).

<sup>15</sup> Inge B. Wissink et al., "Reports of Sexual Abuse of Children in State Care: A Comparison between Children with and without Intellectual Disability," *Journal of Intellectual and Developmental Disability* 43, no. 2 (April 3, 2018): 152–63.

<sup>16</sup> Indah Sri Utari and Benny Sumardiana, "Prevention of Violence Againsts Children During the Covid-19 Pandemic Perspective of Criminology," *Journal of Law and Legal Reform* 3, no. 1 (January 31, 2022): 85–110, <https://doi.org/10.15294/jllr.v3i1.54836>.

- d. "Intercourse (Articles 286, 287, 288)";
- e. "Violation (Articles 289, 290, 292, 293 (1), 294, 295 (1))".

The 15 (fifteen) types of sexual violence stated by Komnas Perempuan from the monitoring results, namely:

- a. "Perkosa";
- b. "Sexual Intimidation including Threats or Attempted Rape";
- c. "Sexual Harassment";
- d. "Sexual Exploitation";
- e. "Trafficking in Women for Sexual Purposes";
- f. "Prostitutes Paksa";
- g. "Sexual Slavery";
- h. "Forced marriage, including hanging divorce";
- i. "Forced Pregnancy";
- j. "Forced Abortion";
- k. "Forced contraception and sterilization";
- l. "Sexual Torture"; "Punishment is inhuman and sexual";
- m. "Traditional practices with sexual nuances that endanger or discriminate against women";
- n. "Sexual control, including through discriminatory rules on the grounds of morality and religion".

The majority of victims of sexual violence are from adult women to children and this situation is increasingly complicated with the victims being children with disabilities. This means that USIDA and also the physical and psychological conditions of children with disabilities are no longer a problem for perpetrators of sexual violence. Article 1 paragraph (1) of Law No. 8 of 2016 concerning Persons with Disabilities states that "Persons with disabilities are all individuals who have physical, mental, intellectual, and/or sensory limitations for a long time who when interacting with the environment can feel difficulties and obstacles to participate fully and effectively with other residents based on equality of rights". The variety of disabilities has been regulated in Article 4 paragraph (1) of Law Number 8 of 2016 concerning Persons with Disabilities, namely:

- a. People with physical disabilities

Persons with Physical Disabilities is a condition in which children experience impaired motor functions such as amputation, paralysis, *paraplegia*, *cerebral palsy*, stroke, and leprosy. Disability is an example of a physical disability in which children experience movement disorders, disorders of bone structures that are congenital such as *cerebral palsy* (brain nerve disorder), as well as paralysis caused by polio and accidents.

- b. Persons with Intellectual Disabilities

People with intellectual disabilities are a condition in which children have limitations in cognitive function and mental development. These individuals may have difficulty understanding information,



learning, communicating, or carrying out daily activities. This disability can be caused by various factors such as impaired brain development or genetic conditions. People with intellectual disabilities experience impaired thinking function because their level of intelligence or IQ is low below average, for example, children with disabilities who have an IQ below average so they do not have the ability to adapt in daily life.

c. People with Mental Disabilities

People with Mental Disabilities are a condition in which a person experiences a mental disorder that affects their thoughts, moods, and behaviors. Some examples of these mental disorders include depression, bipolar, anxiety, schizophrenia, or personality disorders. People with mental disabilities undergo developments that impact their ability to interact with others, control their emotions, and control socially. Autism and certain mechanical disorders in the central nervous system are some examples of disorders that cause children to become hyperactive, unregulated, unable to rest, have impatient behavior, have difficulty concentrating, Autism disorder is a condition experienced by a child from birth or when he is a toddler, which makes him unable to form social relationships and communicate with people around him. Autism, especially girls, has an increased risk of experiencing sexual abuse.<sup>17</sup>

d. People with sensory disabilities

Persons with sensory disabilities are a condition in which a person experiences impairments in one or several senses, such as hearing or vision. This condition can be congenital or acquired as a result of injury or disease. These individuals may require technological assistance, such as hearing aids or *braille*, as well as environmental modifications to facilitate their participation in daily life. Examples of Children with Sensory Disabilities are Children with Blind Disabilities, namely children who experience impairment in vision in the form of total or partial blindness, then Children with Deaf Disabilities, namely children who have barriers and impairments in hearing, both partially and comprehensively, and usually have difficulties in language and speech.<sup>18</sup>

The type of disability that experiences the most sexual violence is intellectual disability. People with intellectual disabilities have limitations in cognitive function and mental development. These individuals may have difficulty understanding information, learning, communicating, or carrying out daily activities. This disability can be caused by various factors such as impaired brain development or genetic conditions so that they experience impaired thinking function due to below-average intelligence levels and are

<sup>17</sup> Arvid Nikolai Kildahl and Sissel Berge Helverschou, "Post-Traumatic Stress Disorder and Experiences Involving Violence or Sexual Abuse in a Clinical Sample of Autistic Adults with Intellectual Disabilities: Prevalence and Clinical Correlates," *Autism*, 2023, 1–15.

<sup>18</sup> Dini Widinasrih, "PERSONS WITH DISABILITIES IN INDONESIA: DEVELOPMENT OF TERMS AND DEFINITIONS," *VOL. 20* (2019): 127–42.

accompanied by an inability to adapt to behaviors that arise during development. The rise of cases of sexual violence that occurs in children with intellectual disabilities is an interesting phenomenon and urgently requires attention from law enforcement officials and even the community. Every year the number of cases of violence against children with intellectual disabilities increases. This can be seen from the data of the annual record of Komnas Perempuan with the following detailed data:

**Table 3.1 Number of cases of sexual violence against Children with Disabilities by Catahu**

No.	Year	Number of Cases of Sexual Violence against Women with Disabilities
1.	2021	90 Cases
2.	2022	42 Cases
3.	2023	105 Cases

**Source : Komnas Perempuan Annual Report**

Based on data from the 2021 National Commission on Women's CATAHU, there were 90 cases of violence against children with disabilities. Intellectual disabilities are the group with the highest experience of violence where there are 51 victims, then Disabilities. sensory as many as 31 victims, mental disability as many as 1 case and physical disability as many as 7 cases. The 2022 Komnas Perempuan CATAHU data states that there are 42 cases of violence against children with disabilities and intellectual disabilities occupying the first most numbers, namely 22 victims, then sensory disabilities as many as 15 victims, mental disabilities as many as 1 victim, and physical disabilities as many as 4 victims. Data from the 2023 Komnas Perempuan CATAHU shows that the number of cases of Women with Disabilities is 105 cases and Intellectual Disabilities is the highest disability group with cases of violence, namely 40 victims, followed by sensory disabilities as many as 33 victims. Sensory disabilities consist of visual disabilities, speech disabilities and hearing disabilities. Mental disability ranks third with 20 victims and physical disability ranks fourth with 12 victims. The data can be seen that children with intellectual disabilities are the most vulnerable to becoming victims of sexual violence, therefore children with intellectual disabilities who are victims of sexual violence must certainly be handled and given legal protection in accordance with applicable regulations.<sup>19</sup>

Legal protection can be interpreted as a form of implementation of the work of legal functions, namely by realizing legal goals in the form of justice for the entire community. Every citizen is a subject of law who certainly has

<sup>19</sup> Komnas Perempuan, "Komnas Perempuan Annual Report 2023," [komnasperempuan.go.id](https://komnasperempuan.go.id), March 2023, <https://komnasperempuan.go.id/catatan-tahunan>.



the right to get protection from various kinds of violence, be it physical, psychological or sexual that has been regulated in accordance with applicable legal regulations. Children with disabilities often face stigma and discrimination that prevents them from reporting sexual violence or getting legal protection that is not in accordance with their needs. Stigma and discrimination can come from society, even from law enforcement officials who consider children with disabilities to be a less important group or do not deserve special attention. Sexual violence against children with intellectual disabilities is a manifestation of gender inequality and discrimination, so it is necessary to carry out legal protection efforts to protect the rights of children with intellectual disabilities. The handling of Children with Disabilities victims of sexual violence will be processed with special procedures, namely obtaining a companion of a linguist, psychologist and companion at the time of examination. More clearly, the following are the legal protections that have been regulated in the Law:<sup>20</sup>

1. Children with intellectual disabilities are entitled to assistance in the Investigation Process, investigation to trial

Assistance for victims of sexual violence is the role of government institutions that is carried out to ensure that victims get service facilities at every stage of providing legal protection. Children with Disabilities who are victims of sexual violence have the right to receive assistance during the legal process. Based on "Article 5 Paragraph (3) letter g of Law No. 8 of 20216 concerning Persons with Disabilities, it is stated that children with disabilities have the right to receive social assistance".

2. Getting Legal Aid

Legal aid is all forms of action taken by law enforcement officials or authorized institutions in order to provide legal services to victims, especially sexual violence, so that they obtain their rights as victims. Based on Article 1 number 1 of Law Number 16 of 2011 concerning Legal Aid, what is meant by "legal aid is legal services intended for recipients of legal aid by legal aid providers". This legal aid involves providing legal services to victims in need in dealing with legal problems where the victim does not have to pay the fees of a defender or lawyer. At this stage, the victim will receive legal assistance which will later be followed up by the police.

3. Children with intellectual disabilities must keep their identities confidential for the sake of the future

This is done to ensure that the victim's future is still long so that it does not affect the victim's life in community associations. Regulations regarding the confidentiality of identities for victims of child sexual

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<sup>20</sup> Sholeh Soeaidy and Zulkhair, *Legal Basis for Child Protection* (Jakarta: CV. NOVINDO PUSTAKA MANDIRI, 2001).

violence with disabilities have been regulated in Article 19 paragraph (1) and paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Justice System, explaining that Article 19 paragraph (1) "The identity of the Child, Child Victim, and/or Child Witness must be kept secret from news in print or electronic media". Article 19 paragraph (2) "Identity as referred to in paragraph (1) includes the name of the child, the name of the victim's child, the name of the witness's child, the name of the parent's name, address, face, and other things that can reveal the identity of the child, the victim's child, and/or the witness's child". Then it is regulated in Article 164 letter (i) of Law Number 23 of the Special Protection Year for Children who are in conflict with the law as referred to in Article 59 paragraph (2) letter b, namely "Children who are in conflict with the law are obliged to obtain avoidance from publication of their identity".

4. Children with intellectual disabilities have the right to receive counseling guidance

The purpose of counseling is to help victims of sexual violence in recognizing what problems are with them after experiencing unpleasant things. Counseling is carried out in effective ways to empower the victim, to be able to decide what the victim should do in the future, and to strengthen the family and the victim in facing the problems they are going through.

5. Psychologist Assistance

Psychologist assistance can help victims to overcome the psychological impact experienced by victims of sexual violence. Victims of sexual violence will be prone to feeling inferior, feeling afraid, excessive anxiety, and depression. This, of course, will affect the aspects of learning and socializing children who are victims of sexual violence in the environment. Victims will also be vulnerable to secondary trauma if there is stigmatization from the community who tend to blame the victim for the occurrence of sexual violence. Sexual violence that befalls children with intellectual disabilities victims will be sent to a psychologist for examination because sexual violence leaves a deep trauma for the victim, and the effects can last a lifetime

6. Children with intellectual disabilities have the right to receive rehabilitation

Rehabilitation is an activity carried out to restore the condition of the victim and the ability of the victim who is helpless because of a disaster, the purpose is so that the suffering experienced by the victim does not increase. Based on Article 1 Number 23 of the Criminal Procedure Code, rehabilitation can be defined as "the act of fulfilling a person's right to have his rights restored in his ability, position and dignity as well as dignity given at the level of investigation, prosecution or court because he was arrested, detained, prosecuted or tried without any reason

based on the law or because of a mistake about the person or the law applied". According to Article 6 of Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, it explains the rights of victims of sexual violence, namely "the right to receive medical assistance and psychosocial and psychological rehabilitation assistance". This rehabilitation is part of the effort to heal what the victim experienced. Rehabilitation is very important to monitor and check the condition of victims, especially children with intellectual disabilities victims of sexual violence.

Rehabilitation is carried out by dividing into 2 types, namely as follows:

a. Health Rehabilitation

It is a series of integrated treatment or care activities designed to help victims of sexual violence by restoring the physical condition of children, victims' children and/or witness children.

b. Social Rehabilitation

Social Rehabilitation is a series of actions to recover victims of sexual violence by providing various services both physically, mentally and socially that are useful to restore a person's confidence so that they can carry out their activities back to normal. Based on "Article 35 of the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 26 of 2018 concerning Social Rehabilitation and Social Reintegration for Children Facing the Law, Social Rehabilitation is carried out in the form of":

- a. "Psychosocial Motivation and Diagnosis";
- b. "care and nurturing";
- c. "vocational training and entrepreneurship coaching";
- d. "mental and spiritual guidance";
- e. "physical guidance";
- f. "social guidance and psychosocial counseling";
- g. "accessibility services";
- h. "social assistance and assistance";
- i. "resocialization guidance";
- j. "further guidance"; and/or
- k. "Reference".

The reality that occurs in providing legal protection for Children with Intellectual Disabilities is not in accordance with laws and regulations. There are still many victims who are not given their rights, namely not getting legal assistance and translators in accordance with "Law No. 8 of 2016 concerning Persons with Disabilities, Law No. 31 of 2014 concerning the Protection of Witnesses and Victims and Law No. 35 of 2014 concerning Child Protection". Injustice in the handling of the law and the granting of rights to Children with Disabilities carried out by Investigators or Law Enforcement Officials has certainly violated the Laws and Regulations as stipulated in Article 28 of Law

No. 8 of 2016 concerning Persons with Disabilities which reads "The Government and Regional Governments are obliged to guarantee and protect the rights of Persons with Disabilities as legal subjects to carry out the same legal actions as others". Then Article 5 Paragraph (3) Letter f of Law No. 8 of 2016 concerning Persons with Disabilities which reads "children with disabilities have the right to the same treatment as other children to achieve social integration and individual development". Lack of sensitivity to handle cases of sexual violence against children with disabilities leads to suboptimal case handling, lack of empathy can exacerbate the trauma experienced by victims. This makes law enforcement officials often do not understand the special needs of Children with Disabilities, causing the handling of cases to be unfair and not in favor of the victim even though the Laws and Regulations require law enforcement officials to have a special understanding of the Incumbent.

Children with disabilities are particularly vulnerable to sexual violence, and perpetrators are usually from the surrounding environment or the victim's closest people. There is no guarantee that the people closest to them cannot also be a threat in committing a criminal act of sexual violence, which makes them feel that they are living under pressure. Article 27 Paragraph (1) of the 1945 Constitution states that "every citizen is equal to his or her position in the law and government is no exception," and Article 28D Paragraph (2) of the 1945 Constitution states that "everyone has the right to fair legal recognition, guarantee, protection, and certainty, as well as equal treatment before the law". Article 28D Paragraph (2) of the 1945 Constitution states that "everyone has the right to fair legal recognition, guarantee, protection, and certainty, as well as equal treatment before the law", Article 28I Paragraph (2) states that "everyone has the right to be free from discriminatory treatment on any basis, and has the right to protection against discriminatory treatment". Article 28D Paragraph (3) states "that every citizen has the right to have equal opportunities in government". Furthermore, Article 28H Paragraph (2) states "that everyone has the right to convenience and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice".

The guarantee of protection for children with intellectual disabilities is also stated in "Article 3 paragraph (2) and paragraph (3) of Law No. 39 of 1999 concerning Human Rights explained that in paragraph 2 everyone has the right to recognition, guarantee, protection and fair legal treatment as well as legal certainty and equal treatment before the law". In paragraph 3 "Everyone has the right to the protection of human rights and basic human freedoms, without discrimination". Persons with disabilities are included in the group that is vulnerable to becoming victims of sexual violence and have the same rights as non-disabled children, this has been regulated in Article 5 Paragraph (3) of Law No. 39 of 1999 concerning Human Rights explained that "Everyone who belongs to vulnerable community groups has the right to receive treatment and protection more regarding their specificity". In addition

to the regulations that have been mentioned, there are several regulations that are the legal umbrella in providing protection for women and children with disabilities from various forms of violence. The laws and regulations that regulate the legal protection of children with disabilities victims of sexual violence under the provisions of the 1945 Constitution are regulated in Undang-Undang No. 8 of 2016 concerning Persons with Disabilities, Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning Child Protection, Undang-Undang No. 31 of 2014 amendments to Law No. 13 of 2006 concerning the protection of Witnesses and Victims and Law No. 12 of 2022 concerning the Crime of Sexual Violence. These laws and regulations are a legal umbrella for children with disabilities who experience sexual violence. This form of sexual violence is a crime against human dignity and a violation of human rights that needs to be abolished and the victim must obtain maximum legal protection. Indonesia has finally passed the Sexual Violence Crime Bill into Law No. 12 of 2022 concerning the Crime of Sexual Violence, namely on Tuesday, April 12, 2022 through the Plenary Meeting of the House of Representatives of the Republic of Indonesia based on Statute Book 2022 number 120. With the enactment of the Sexual Violence Crime Law, it will be very useful to prevent, protect, provide recovery and empower victims and also provide awareness for the community at large to work together in eliminating sexual violence.<sup>2122</sup>

Based on the laws and regulations that have been explained, it can be seen that people with disabilities are included in the category of community groups that are very vulnerable or more vulnerable to discriminatory treatment and violence, especially sexual, so legal protection must be realized to the maximum because the impact can damage the future of children with disabilities. Due to the specificity of children with disabilities, in terms of providing legal protection for children with disabilities victims of sexual violence, they are entitled to special protection and are always facilitated in legal matters. As for the legal protection for children with disabilities, which in Article 70 of Law No. 35 of 2014 concerning Child Protection, it is stated that Special Protection for Children with Disabilities as referred to in Article 59 paragraph 2 letter l is carried out through efforts:

- a. "the treatment of children humanely in accordance with the dignity and rights of the child";
- b. "special needs fulfillment";
- c. "the same treatment as other children to achieve the fullest possible social integration and individual development"; and
- d. "social assistance".

Law No. 8 of 20216 concerning Persons with Disabilities has guaranteed more specific protection and legal protection efforts for children

<sup>21</sup> Sheptia Elliza, "Legal Protection of Children and Women from Sexual Abuse," *Nomos : Journal of Legal Research* 2, no. 3 (May 28, 2022): 121–28.

<sup>22</sup> Hary Suharto and Muhammad Fadhila, "LEGAL PROVISIONS ON THE PROTECTION OF CRIME VICTIMS IN INDONESIA" 21 (2023).

with disabilities. This has been stated in article 3 letter b which states that the Implementation and Fulfillment of the Rights of Persons with Disabilities aims to "ensure efforts to respect, promote, protect, and fulfill rights as a dignity inherent in Persons with Disabilities". legal protection guarantees for children with disabilities are also contained in Article 28 which states that "The Government and Regional Governments are obliged to guarantee and protect the rights of Persons with Disabilities as legal subjects to carry out the same legal actions as others". Article 29 emphasizes that "The Government and Regional Governments are obliged to provide legal assistance to persons with disabilities in every examination at each law enforcement agency in civil and/or criminal matters in accordance with the provisions of the law". Children with intellectual disabilities have the right to receive adequate legal assistance during the legal process, ranging from investigations, investigations to judicial proceedings. This is important to ensure that they can testify, get information regarding the course of the legal process, obtain their rights and get fair treatment. Children with intellectual disabilities are also obliged to undergo rehabilitation, based on Article 1 Number 23 of the Criminal Procedure Code, Rehabilitation can be defined as "the act of fulfilling a person's right to receive the restoration of his rights in his ability, position and dignity as well as dignity given at the level of investigation, prosecution or court because he was arrested, detained, prosecuted or tried without any reason based on the law or because of mistake about the person or the law applied". According to Article 6 of Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning 95 Protection of Witnesses and Victims explains the rights of victims of sexual violence, namely "the right to medical assistance and psychosocial and psychological rehabilitation assistance". This rehabilitation is part of the effort to heal what the victim experienced. Rehabilitation is very important to monitor and check the condition of victims, especially children with intellectual disabilities victims of sexual violence. Children with intellectual disabilities have rights as victims as stated in Article 5 Paragraph (1,2 and 3) of Law No. 8 of 2016 concerning Persons with Disabilities, namely:

#### **Paragraph (1)**

Persons with Disabilities have the right to "live, free from stigma, privacy, justice and legal protection, education, employment, entrepreneurship, and cooperatives, health, politics, religion, sports, culture and tourism, social welfare, Accessibility, Public Services, Protection from disasters, Abilitation and rehabilitation, Concessions, data collection, independent and involved in society, expression, communication, and obtaining information, relocation and citizenship, and free from acts of discrimination, neglect, torture, and exploitation".



**Paragraph (2)**

In addition to the rights of Persons with Disabilities as referred to in paragraph (1), women with disabilities have the right to:

- a. "on reproductive health";
- b. "accept or reject the use of contraceptives";
- c. "get Protection over layered Discrimination treatment"; and
- d. "to obtain protection from acts of violence, including violence and sexual exploitation".

**Paragraph (3)**

In addition to the rights of Persons with Disabilities as referred to in paragraph (1), Children with Disabilities have the right to:

- a. "obtain special protection from discrimination, neglect, harassment, exploitation, as well as violence and sexual crimes";
- b. "getting care and care for the family or surrogate family for optimal growth and development";
- c. "its interests in decision-making are protected";
- d. "the treatment of children humanely in accordance with the dignity and rights of children";
- e. "Fulfillment of special needs";
- f. "the same treatment as other children to achieve social integration and individual development"; and
- g. "Get Social Assistance".

Article 66 Paragraphs (1) and (2) of Law No. 12 of 2022 concerning the Crime of Sexual Violence contains the victim's right to protection, explaining that in article 1 "Victims have the right to Handling, Protection, and Recovery since the occurrence of the Crime of Sexual Violence. Article 2 "Victims of Persons with Disabilities are entitled to accessibility and appropriate accommodation for the fulfillment of their rights in accordance with the provisions of laws and regulations, unless otherwise specified in this Law". "Based on Article 67 Paragraph (1) Undang\_Undang No. 12 of 2022 concerning the Crime of Sexual Violence, it is explained that the rights of victims include":

- a. "Right to handling";
- b. "Right to protection"; and
- c. "Right to Restoration".

In Paragraph (2) it is stated that "The fulfillment of Victims' Rights is an obligation of the state and is carried out in accordance with the conditions and needs of the victims". Persons with disabilities who are victims of sexual violence also have "the right to protection facilities, the provision of access to information on the implementation of protection and protection from the threat of sexual violence and recurrence of violence". In the recovery process itself, it has been regulated in article 70 Paragraph (2) Undang\_Undang No. 12 of 2022 concerning the Crime of Sexual Violence "that recovery before and during the judicial process includes":

- a. "Provision of health services for Physical Recovery";
- b. "psychological strengthening;
- c. "providing information on Victims' Rights and judicial processes";
- d. "providing information about Recovery services for Victims";
- e. "legal assistance";
- f. "providing accessibility and appropriate accommodation for Victims of Disabilities";
- g. "provision of assistance in transportation, consumption, temporary living expenses, and a decent and safe temporary residence";
- h. "provision of spiritual and spiritual guidance";
- i. "provision of educational facilities for victims";
- j. "provision of population documents and other supporting documents needed by the Victim";
- k. "the right to information in the case that the inmate has completed his sentence"; and
- l. "The right to the removal of sexually explicit content for cases of sexual violence by electronic means".

Then in Paragraph (3) it is explained about the recovery carried out after the judicial process, which includes:

- a. "monitoring, examination, and physical and psychological health services of victims on a regular and continuous basis";
- b. "strengthening community support for Victim Recovery";
- c. "assistance in the use of restitution and/or compensation";
- d. "provision of population documents and other supporting documents needed by the Victim";
- e. "Provision of social security services in the form of health insurance and other social assistance in accordance with needs based on integrated team assessment";
- f. "economic empowerment"; and
- g. "provision of other needs based on the identification results of UPTD PPA and/or Community-Based Service Provider Institutions".

In providing legal protection to children with intellectual disabilities who are victims of sexual violence, there are 2 ways that are carried out, namely by litigation or non-litigation. Litigation protection includes special legal assistance for children with disabilities, the provision of interpreters to facilitate communication, and advice from doctors, psychologists, and therapists to assist victims in their physical and mental recovery. Furthermore, the form of legal protection for child victims in a non-litigation way can be carried out by educating people with disabilities about the rights obtained by children with disabilities, victims of sexual violence, and law enforcement officials so that in fulfilling the rights of victims can be carried out as regulated in the law. Monitoring the course of the legal process so that there are no rights of persons with disabilities that are violated and seeking a disability-friendly legal process. Indonesia currently still has very minimal legal procedures and mechanisms, this is reviewed from the unavailability of

facilities and special needs of people with disabilities, and the most serious obstacle is the lack of provision of sign language interpreters to facilitate communication. In fact, it is clearly stated that "children with disabilities have the right to get a translator" as stated in article 5 paragraph (1) of the Law on the Protection of Witnesses and Victims in conjunction with article 31 of law number 8 of 2016 concerning Persons with Disabilities in conjunction with article 15 paragraph (1) of Government Regulation number 39 of 2020 concerning "proper accommodation for persons with disabilities in the judicial process, The translator here is a person who has the ability and knowledge to understand the language used by People with Intellectual Disabilities".

Based on the theory of legal protection put forward by Philipus M. Hadjon, it is defined that legal protection is an effort to protect individual rights so that violations do not occur. There are two protections, namely preventive protection and repressive protection, this is related to legal protection for children with intellectual disabilities who are victims of sexual violence. The following is the Grouping of Legal Protection according to Philipus M. Hadjon which is categorized into 2, including:

1. Preventive legal protection is protection provided before the occurrence of a violation of rights or a criminal act, here the case is sexual violence against Children with Intellectual Disabilities. Preventive Legal Protection provided by the government or law enforcement officials aims to prevent violations before they occur. Viewed from the preventive aspect, it can be analyzed through regulations that include the protection of Children with Disabilities where the law already regulates the rights of children victims of sexual violence, but in the law it is said that the protection for Children with Disabilities is carried out specifically but it is not explained what the special rules are. Then preventive protection carried out by the government or law enforcement officials is by conducting socialization programs, legal counseling to the community, and conducting training for investigators to be more competent in providing legal protection
2. Repressive legal protection where this legal protection has the purpose of resolving disputes. Repressive legal protection aims to provide legal protection for children with disabilities who are victims of sexual violence and provide a deterrent effect for perpetrators of sexual violence. This protection is carried out by law enforcement officials in the form of investigation and investigation actions up to the trial stage of cases of sexual violence that have occurred against children in order to enforce applicable legal norms and provide fulfillment of children's rights to get justice. Therefore, the perpetrator can be charged with articles that have been regulated in laws and regulations. This is expected

to be a deterrent effect for perpetrators of sexual violence, so that later there will be no more cases of sexual violence.

Although Indonesia has a fairly comprehensive legal framework in protecting children with intellectual disabilities from sexual violence, its implementation still faces various obstacles. Many cases of sexual violence against children with intellectual disabilities are not reported or properly processed. This is often caused by a lack of awareness and understanding from law enforcement officials about the rights of persons with disabilities. While the Act already protects children with disabilities in general, there is a need to place more emphasis on specific protections for those with intellectual disabilities who have unique vulnerabilities. Efforts to increase awareness and education about the protection of children with intellectual disabilities are still lacking. Stigma and discrimination against people with disabilities are still prevalent in society, hindering their protection and recovery. There is still a lot of stigma and discrimination against children with intellectual disabilities, both in schools, communities, and within their own families. Education programs and awareness campaigns about the rights of children with disabilities are still not intensive and comprehensive. With a comprehensive approach and good coordination between various stakeholders, it is hoped that children with intellectual disabilities who are victims of sexual violence in Indonesia will get proper protection and can recover and develop optimally.

## Conclusion

Children with intellectual disabilities are included in the category of community groups that are very vulnerable or more vulnerable to discriminatory treatment and violence, especially sexual, so they need to get legal protection. Legal protection for children with intellectual disabilities victims of sexual violence in Indonesia has been regulated in various laws and regulations and supported by relevant institutions. However, the big challenge is that there are still obstacles in law enforcement, coordination between institutions, and meeting the special needs of children with intellectual disabilities who are still not in accordance with laws and regulations. The reality that occurs is that many children with disabilities do not receive legal benefits and language interpreters in the legal process, so it is not in accordance with the principles of justice regulated in the law, including Law Number 35 of 2014 concerning Child Protection and Law Number 8 of 2016 concerning Persons with Disabilities which emphasizes the importance of justice for all parties without discrimination. Increased training for law enforcement, adequate resource allocation, and more intensive education programs are needed to increase the effectiveness of legal protection and ensure that the rights of children with intellectual disabilities are truly protected.

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**Undang-Undang:**

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- Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims;
- Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System;
- Criminal Code;
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