

Provisions of Legal Aid as a Form of Protection for Child Victims of Rape

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Abstract

Indonesia as a state of law guarantees the human rights of its citizens, one of which is the right to equal treatment before the law. Legal aid is one of the state's efforts to fulfill this right for the poor. This research aims to examine the provision of legal aid in Indonesia, which departs from the case study of child rape that occurred in Banyumas. This research uses normative juridical method with statutory approach and conceptual approach. The results of this study show that the state has accommodated the need for legal aid as regulated in Law Number 16 of 2011 concerning Legal Aid. However, those who need legal aid are not only poor people but also children who are victims of rape. The provision of legal aid to child victims of rape is a form of state responsibility in providing legal protection to children so that the rights that children should get as stated in the Child Protection Law can actually be realized, not limited to being stated in the law.

KEYWORDS

Legal Aid; Child Protection; Rape Victims



Introduction

The State of Indonesia is a state based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. There are several characteristics of the principle of a state based on law that Indonesia adheres to, namely the existence of protection of human rights, the existence of governance based on statutory regulations, applicable laws, the distribution of power, the implementation of people's sovereignty, and the existence of state administrative courts¹. Human rights within the framework of the Indonesian legal state are manifested in the form of protection for citizens in the 1945 Constitution of the Republic of Indonesia².

The provisions on human rights in the 1945 Constitution of the Republic of Indonesia which form the basis law is the highest norm that must be obeyed by anyone. Because human rights are located in the constitution, all provisions related to human rights must be respected and guaranteed by the state³. One of the rights of citizens guaranteed by the state is the right to equal treatment before the law as referred to in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law.

The right to equal treatment before the law is non-derogable rights so that the state must guarantee its fulfillment to all its citizens including the poor as a manifestation of access to justice⁴. One form of the state's responsibility

¹ Haposan Siallagan, "Penerapan Prinsip Negara Hukum Di Indonesia," *Sosiohumaniora* 18, no. 2 (2016), <https://doi.org/10.24198/sosiohumaniora.v18i2.9947>.

² Teow See Heng et al., "Book Reviews," *Asian Journal of Political Science* 3, no. 1 (1995), <https://doi.org/10.1080/02185379508434056>. In Search of Human Rights: legal-Political Dilemmas of Indonesia's New Order, 1966-1990 (Jakarta: Gramedia Pustaka Utama, 1993)

³ Abd Muni, "Hak Asasi Manusia Dalam Konstitusi Indonesia," *Al'adalah* 23, no. 1 (2020), <https://doi.org/10.35719/aladalah.v23i1.27>.

⁴ Cahya Wulandari, *Teropong Bantuan Hukum Di Indonesia* (Semarang: LPPM UNNES, 2020), 5.

to provide these constitutional rights to the poor is by having specific arrangements regarding legal aid in Law no. 16 of 2011 concerning Legal Aid (hereinafter referred to as Law No. 16 of 2011). In addition, the state also requires advocates to provide legal assistance free of charge to justice seekers who cannot afford it, this is stated in Article 22 paragraph (1) of Law no. 18 of 2003 concerning Advocates (hereinafter referred to as Law No. 18 of 2003).

Based on article 1 point 1 of Law no. 16 of 2011 it is explained that legal aid is legal services provided by legal aid providers free of charge to legal aid recipients. Further explained in Article 1 point 2 of Law no. 16 of 2011, Recipients of Legal Aid are people or groups of poor people. The criteria for poor people according to Article 5 (1) are every person or group of poor people who cannot fulfill their basic rights properly and independently. Legal assistance will be provided for various legal problems experienced by the poor, both civil, criminal and state administrative law issues, both litigation and non- litigation.

Day by day more and more criminal acts occur in society. One of the many existing social problems is the difficulty of access to justice for the poor, especially when it involves children as victims in it. Therefore, this research will focus on examining legal aid for cases of child rape that occurred in Banyumas. The rape crime as regulated in Law no. 12 of 2022 concerning Crimes of Sexual Violence (hereinafter referred to as Law No. 12 of 2022) and Law no. 23 of 2002 concerning Child Protection (hereinafter referred to as Law No. 23 of 2002) which has been amended by Law no. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter referred to as Law No. 35 of 2014) will then be analyzed in relation to legal aid provided by the state as stipulated in Law no. 16 of 2011.

Method

This study uses a normative juridical method so that various literature materials are used to answer the issues under study⁵. The legal materials used in this research are primary, secondary, and tertiary legal materials. This study uses a legal and conceptual approach. The statutory approach is carried out by reviewing various laws and regulations related to the legal issues being studied. The conceptual approach departs from the views and doctrines that have developed in the science of law⁶. The data collected through library research was then analyzed using descriptive analysis methods.

Result and Discussions

Case Chronology

The victim was a 12 years old boy who was in first grade at a junior high school in Banyumas. She was a victim of rape committed by 8 (eight) suspects. The five suspects who have been arrested by the police are, Y (27), W (70), J (50), SA (69), and K (67). Three other suspects fled and have not been found. It is known that four suspects, namely W (70), J (50), SA (69), and K (67) are neighbors of N. The suspect raped the victim at a different place and time. Two crime scenes at the hotel, three crime scenes at the suspect's house, and the rest at the cemetery. The victim was lured by the perpetrator with money before the rape was carried out⁷.

Currently, the victim is about three months pregnant. After the incident that happened to the victim became known to the public, the victim's school went to the victim's house. A few days later, the victim's parents, namely N

⁵ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif & Empiris* (Jakarta: Kencana, 2016), 129.

⁶ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 57.

⁷ Rachmawati, "Kisah Pilu Bocah 12 Tahun Di Banyumas, Diperkosa Dan Diminta Keluar Sekolah Karena Hamil," *Regional.Kompas.Com*, 2023, <https://regional.kompas.com/read/2023/03/28/060700278/kisah-pilu-bocah-12-tahun-di-banyumas-diperkosa-dan-diminta-keluar-sekolah?page=all>.

(54), were invited to school by the school principal and then asked to make a letter of resignation from the victim. Initially N was given a sample resignation letter and then N was asked to make a letter in his own handwriting. At that time, N admitted that he could not do much so he followed the school's request. The school directed N so that his child pursued package B or if he wanted to move, the school would help. After that incident, N was not sure how his son's education would continue⁸.

Provisions of Legal Assistance in Indonesia According to Legal Regulations

Every Indonesian citizen has the same legal and government status without exception. This is stated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. One of the manifestations of realizing the contents of this article is the existence of legal assistance for every member of the public who is involved in a legal case and requires legal assistance. Legal aid is a service or program provided by an organization or legal institution to help people who need legal assistance in dealing with problems related to the law regardless of ethnicity, race, religion, especially for people who are financially unable to pay legal fees and pay legal fees. attorney fees. According to Seorjono Soekanto, legal aid is assistance in the field of law by experts to the general public who need to realize their rights and to obtain reasonable legal protection.

An institution or organization that provides legal aid is called the Legal Aid Institute (LBH), which is a non-governmental organization founded by parties who wish to provide legal assistance to people in need, such as advocates, academics, and community activists. There is also legal aid that focuses on women and children victims of sexual violence, namely the Women and Children Empowerment Agency (BPPA) and the Witness and

⁸ Fadlan Mukhtar Zain, "Nasib Anak 12 Tahun Diperkosa 8 Orang Di Banyumas, Hamil Hingga Dipaksa Keluar Dari Sekolah," *Kompas.Com*, 2023, <https://regional.kompas.com/read/2023/01/18/170709578/nasib-anak-12-tahun-diperkosa-8-orang-di-banyumas-hamil-hingga-dipaksa?page=1>.

Victim Protection Agency (LPSK) as providers of legal assistance and protection for witnesses and victims in a crime.

Legal aid has developed in Indonesia. If traced, initially legal aid existed since the Roman era and developed until it entered Indonesia and began with an idea by Adnan Buyung Nasution at the Peradin Congress in 1969. Adnan Buyung Nasution's idea was an idea to establish a legal aid institution in Indonesia which then the idea set forth in the LBH/YLBHI Articles of Association⁹. In addition, in Articles 16 and 26 of the ICCPR (International Covenant on Civil and political Right also provides content that everyone has the right to obtain legal protection and may not receive discrimination. With the concept of legal aid for underprivileged people, it will increase legal awareness for all people and they will realize that their rights will also be fulfilled by the state in dealing with the law. Legal experts also often emphasize the importance of legal aid as part of human rights, in which everyone has the right to protection and enforcement of their rights in a fair and equal manner before the law. Therefore, legal aid is also one of the efforts to improve the quality and fairness of the justice system in a country.

In Indonesia, legal aid is more focused on the meaning of legal aid namely legal aid given free of charge or free to the poor. This is reinforced by the existence of Law no. 16 of 2011 concerning Legal Aid which is the basis for the enactment of legal aid in Indonesia. In providing legal assistance, of course, it is based on a principle so that its meaning and purpose can be achieved. This is stated in the law on legal aid, namely the principles of justice, equality before the law, openness, efficiency, effectiveness and accountability. These principles must synergize with each other and must exist in order to provide maximum service to people who need legal assistance¹⁰.

⁹ Rachmad Abduh and Faisal Riza, "Pemberian Bantuan Hukum Kepada Masyarakat Miskin Yang Mengajukan Gugatan Melalui Pos Bantuan Hukum Di Pengadilan Agama," *Jurnal EduTech* 4, no. 2 (2018).

¹⁰ Eka N.A.M. Sihombing, "Eksistensi Paralegal Dalam Pemberian Bantuan Hukum Bagi Masyarakat Miskin," *Jurnal Ilmiah Penegakan Hukum* 6, no. 1 (2019), <https://doi.org/10.31289/jiph.v6i1.2287>.

Judging from the very fast development of the times, giving rise to various new things in every aspect of human life. These aspects vary, starting from social and political aspects. Rules in law always coexist with social and political aspects, as well as legal aid. Legal aid has various concepts along with the development of social and political aspects, including¹¹:

1. Conventional Legal Aid

Conventional legal aid is passive legal aid with a very formal and legalistic approach. The passive nature of conventional legal aid means that legal aid institutions or advocates don't do anything to find a problem, but just wait silently until a client or community adjudicates the problem. Then formal and legalistic means that the concept of legal aid will only see the problems of the community or clients only from their legal point of view.

2. Constitutional Legal Aid

The concept of legal aid is based on that law is a supreme commander (supreme of law) in a country and a respect for human rights. In this way the concept of legal aid will focus on broader legal services and not only services in court. Relevant law enforcers are also active in looking for underprivileged people who are in need of a defense for their rights under the law and are not limited to individuals and legal formalities.

3. Structural Legal Aid

Structural legal assistance does not only focus on helping the poor until the trial process, but also provides knowledge and basic legal education to the community by taking into account the existing economic and cultural conditions. The concept of structural legal aid aims to provide independence from the community so that at least they understand the current problems and know their rights so that if they experience a problem they can handle it on their own with the knowledge they have been given.

¹¹ Wulandari, *Teropong Bantuan Hukum Di Indonesia*, 12.

4. Responsive Legal Assistance

Responsive legal aid is an approach to providing legal aid that emphasizes the needs of clients or communities who need access to the legal system. This approach recognizes that every individual has the right to legal aid, and that legal aid must be tailored to the specific needs of the client or community served.

Responsive legal aid focuses on empowering clients and communities, providing easier access to the legal system and ensuring that they get the protection and justice they deserve. This involves a variety of strategies, such as providing legal aid services that are more affordable and accessible, taking a more holistic approach to dealing with legal issues, and increasing client participation in the legal process.

The Criminal Action of Rape and its Types

Rape is a type of crime that is very, very bad, and even creates lasting trauma for the victim. The crime of rape seems to take away everything that the victim has, making the reason that taking away the victim's virginity itself, this type of crime can also take away the victim's future. So not a few rape victims have to choose to commit suicide because they have to endure the trauma and disgrace for the rest of their lives, even though rape victims have been protected by the government with Law no. 12 of 2022 and other related laws. even if the rape victim is a child, the perpetrator of the rape can be subject to Law no. 23 of 2002 and Law no. 35 of 2014 which of course the punishment for the perpetrator is greater than the rape of the others. This of course cannot be separated from the factor that children's age is the time to learn and play but must suffer prolonged trauma.

However, after what the victims experienced as a result of rape, not a few people also consider and despise rape victims, this is also a factor in the prolonged trauma for rape victims and to the point of committing suicide. Even though rape victims should receive more attention and receive support

system but this is just the opposite. This is as can be seen in the rape case that occurred in Bangkalan, where a woman felt ashamed because she was raped by 8 men so she preferred to commit suicide, the rape occurred on Thursday 25 June 2020, while the suicide occurred on Wednesday 1 July 2020¹².

This is very unfortunate, because the victim should have received good treatment and support to restore his psychological trauma but instead had to die. Such incidents did not just happen once or twice, but several times. In fact, not infrequently the victim also has to bring disgrace for life if it turns out that the victim is pregnant. This of course creates a huge dilemma for the victim, whether the victim has to choose to keep her innocent baby or choose to abort it. Both options are very difficult for the victim to do. So the victim just chose to end his life.

Talking a lot about rape, in this case it cannot be separated from what is meant by rape, how can this category of crime be called rape, because not all intercourse that is not with his wife can be said to be rape, this can be seen by the phenomenon of the large number of pregnant teenagers out of wedlock turns out to be pregnant by his own girlfriend on a consensual basis. As is the case that is familiar, where the Ponorogo Religious Court conducted a large-scale dispensation for marriage to junior and senior high school students, where all of them were pregnant out of wedlock and most of them were still classified as children, who should not have thought about it. the.

According to Islamic Law itself, as explained by Ali Ibnu Ahmad Ibnu Ali al -'Amir, that rape is intercourse between a man and a woman without the woman's consent. According to Ali Ibnu Ahmad Ibnu Ali al -'Amir, several conditions must be met so that the act can be categorized as a criminal act of rape, including: The union of the whole body (intercourse),

¹² Hilda Meilisa, "Ni Curhat Korban Sebelum Bunuh Diri Setelah Diperkosa 8 Orang Di Bangkalan," *Detiknews.Com*, 2020, <https://news.detik.com/berita-jawa-timur/d-5088006/ini-curhat-korban-sebelum-bunuh-diri-setelah-diperkosa-8-orang-di-bangkalan/2>.

the absence of the pleasure of a woman, and finally the presence of intentionality from a man¹³.

Besides according to Islamic law, the KBBI (Big Indonesian Dictionary) itself also provides an understanding of rape, which in short rape is an immoral act in the form of forced intercourse and without the consent or desire of the opponent. So it can be concluded that Rape is an act of forced intercourse. Usually rape is always accompanied by acts of violence, not only that, but there are even rapes where the victim is killed. This is of course not small and very troubling for the community. For example, recently it was reported that a junior high school student in Lampung was found dead in the Rubber Plantation area. After being examined, it turned out that the victim was raped and then killed¹⁴.

In Article 285 of the Criminal Code (KUHP) it is stated that "Anyone who by force or threats of violence forces a woman to have sex with him outside of marriage, is threatened with committing rape with a maximum imprisonment of twelve years." From this article, it can be understood that what is meant by rape is " the act or actions of a man who forces a woman to have sex with him outside of marriage by using violence or threats of violence." The elements of the criminal act of rape according to Article 285 of the Criminal Code are: 1) Anyone 2) With violence or threats of violence. 3) Forcing a woman to have intercourse 4) Done outside of marriage¹⁵. The meaning of an act of violence or the presence of a threat of violence is to use

¹³ H. B. Syafuri and Muhamad Wahyudin, "Perbandingan Hukum Terkait Aborsi Hasil Pemerksaan Menurut Hukum Islam Dan Positif," *Formosa Journal of Social Sciences (FJSS)* 1, no. 3 (2022), <https://doi.org/10.55927/fjss.v1i3.939>; Arsyilma Hakiim, Mariyam Abdullah, and Romelah Romelah, "Tindakan Aborsi Akibat Pemerksaan Ditinjau Menurut Pandangan Islam, Bioetika Kedokteran Dan Hukum Di Indonesia," *Jurnal Health Sains* 3, no. 3 (2022), <https://doi.org/10.46799/jhs.v3i3.447>.

¹⁴ Tri Purna Jaya, "Kronologi Pemerksaan Dan Pembunuhan Siswi SMP Di Lampung, Korban Ditemukan Tewas Di Kebun Karet," *Kompas.Com*, 2022, <https://regional.kompas.com/read/2022/09/07/164017578/kronologi-pemerksaan-dan-pembunuhan-siswi-smp-di-lampung-korban-ditemukan?page=all>.

¹⁵ Khusnita Wirandani and Ira Alia Maerani, "Analisis Yuridis Putusan Majelis Hakim Terhadap Pelaku Tindak Pidana Pemerksaan Perempuan Penyandang Disabilitas Tunagrahita (Studi Kasus No.138/Pid.B/2021/PN.JPA) Juridical Analysis Of The Decision Of The Panel Of Judges Againsts The Prepar," *Jurnal Ilmiah Sultan Agung* 1, no. 1 (2022): 166–75.

the perpetrator's physical strength wrongly, for example by carrying out acts of beating either with his bare hands or with a weapon, kicking, and so on which makes the victim helpless. Then the meaning of coercion on a woman is an act of coercion carried out by the perpetrator on a woman who is not the legal wife of the perpetrator to have intercourse accompanied by violence or threats. Furthermore, namely having sex without a legal marriage means that there is penetration of the genitals of men and women so that sperm is released which can have children with women who are not his wife.

In addition to the several cases above, it is not uncommon for rape victims to have to endure shame because the consequences of the rape are not the least of which lead to pregnancy. This is of course a scourge and a threat to society, especially women, although it is possible that men are also victims of this heinous act. So the criminal provisions regarding rape should have been made more stringent, when viewed from the current criminal provisions, they do not have a deterrent effect, this is proven by the large number of rape cases every year. The Central Statistics Agency (BPS) reports that the number of immoral crimes in Indonesia, including rape and obscenity, has increased since the pandemic. In 2020 and 2021, the number of cases of rape and obscenity in Indonesia will reach over 5,900 cases per year.

Maybe when compared to laws in other countries that ensnare perpetrators of rape, punishments in Indonesia tend to be weak, this is because Indonesia still adheres to the principles of human rights, but if you look at how human rights work it should be the victim who needs to be protected, the human rights of the victim are not they are only injured but tend to disappear as a result of the rape, so the punishment for the perpetrators of rape should be more stringent. If you refer to the provisions of Islamic law, as adopted in the countries of the Middle East and North Africa, perpetrators of rape before marriage can be whipped up to 100 times and then exiled for one year, but if the perpetrators of rape are married then

they will be sentenced to stoning. namely being buried alive up to the neck and then being stoned to death¹⁶, although regarding the effectiveness of this punishment is not certain because it can be seen from Middle Eastern countries that there are still many cases of rape, but what can be concluded is that the punishment for the perpetrators of rape is the death penalty¹⁷.n

In addition to an explanation of rape, at least we have to know the types of rape itself. The types of rape are classified as follows¹⁸:

1. Sadistic Rape, is a type of rape that is carried out in a sadistic and aggressive manner, this is not about how the sexual relationship is but the treatment of the person who commits the rape which tends to be sadistic and aggressive.
2. Angry Rape, is a type of rape that the perpetrator takes on the victim, usually the victim feels annoyed with someone but takes it out on the victim of the rape, so this type of rape can be said to be sexual abuse.
3. Domination Rape, is a type of rape that is carried out on the basis of the perpetrator wanting to dominate, so the perpetrator still wants to have sexual intercourse but by hurting and taking control of domination.
4. Seductive Rape, is a rape that occurs in stimulating situations created by both parties.
5. Victim Precipitated Rape, is a rape as if the victim is the pioneer, even though this is just a tactic for the perpetrator to get sexual satisfaction.
6. Exploitation Rape, is rape which shows that at every opportunity to have sexual relations obtained by men by taking advantages that are contrary to the position of women who depend on them economically and socially.

Sanctions Against the Personnel of the Criminal Action of Child Rape

¹⁶ Miftahul Chairina, "Umur Dalam Pandangan Hukum Pidana Islam (Kajian Atas Putusan PN Depok)," 2009.

¹⁷ Nur Arifah B., "Persepektif Hukum Pidana Islam & Positif Terhadap Uqubah (Hukuman) Pemerkosaan Terhadap Anak," *Delictum: Jurnal Hukum Pidana Islam*, n.d., 102–183.

¹⁸ Salam Amrullah, "Perlindungan Hukum Terhadap Korban Tindak Pidana Pemerkosaan," *Jurnal Andi Djema, Jurnal Pendidikan* 3, no. 1 (2020).

Based on its history in law, related to the rule of law on rape, it has existed for a long time. Rape is not only a problem between individuals, but is a social problem related to human rights, especially related to protection against various forms of violence, torture, and alienation of women by society. Rape is a violation of human rights, especially women's because it can limit the movement of the woman herself in the form of sexual terror that comes to the detriment of privacy rights. A woman who has become a victim of a criminal act of rape obtains human rights protection. If we talk about human rights, we will encounter a wide variety of sectors and also various artificial boundaries within them. Human rights are rights that are directly obtained by humans that originate from God Almighty or known as natural rights. Human rights and criminal acts have a very close relationship, that is, every criminal act of delict, event, and deed can lead to crimes or violations of human rights. Victims may not fight for their fate alone but must be protected in terms of fighting for the fate of victims of rape by law enforcers. The position of human rights as natural rights belongs to everyone which has existed in every human being since human birth, therefore the existence of these human rights must be respected, protected and valued by every human being. Applying criminal sanctions to perpetrators of crimes is one of the best ways to uphold justice. Law enforcers can pay more attention to crime victims who suffer physically, mentally, and psychologically as a result of a crime¹⁹.

In Indonesia's positive law, there is one legal basis or criminal sanction that can be applied to the perpetrators of rape so that they feel the effects, namely in Article 285 of the Criminal Code which states that the perpetrators of rape can be subject to imprisonment for a maximum of 12 years.

In reality, victims of rape are not only experienced by adult women but also children who become victims because the perpetrators are often close

¹⁹ Kadek Dwi Novitasari, Ida Ayu Putu Widiati, and I Nengah Laba, "Tinjauan Yuridis Terhadap Tindak Pidana Perkosaan Dalam Perspektif Hak Asasi Manusia," *Jurnal Analogi Hukum* 2, no. 3 (2020), <https://doi.org/10.22225/ah.2.3.2501.388-392>.

to the victim. Rape has a bad impact on victims, especially underage women (children), which causes physical and psychological consequences. The physical impacts experienced include sexually transmitted diseases (STDs), damage to women's organs such as torn hymen, unwanted pregnancies, and the possibility of death due to forced intercourse. Due to the incident of rape, victims can experience severe trauma and psychological shocks always appear in their lives. This has short and long term effects that can interfere with the future of child rape victims. So that children's rights must be protected specifically which includes law enforcement such as legislation and actions that guarantee the security of children's rights, such as mental, physical and social services and assistance. The legal basis for protecting the rights of children who are victims of rape is in Article 287 paragraph (1) of the Criminal Code, which states that:

“Anyone who has intercourse with a woman out of wedlock, when it is known or should reasonably be suspected, that she is not yet fifteen years of age, or if her age is not proven, that she is not yet capable of marriage, shall be punished by a maximum imprisonment of nine years”.

This article before fully protecting the victim's child, because the threat of criminal sanctions for perpetrators is still light and allows the perpetrators to be free from the threat of criminal sanctions, is considered not to reflect justice. Especially if the perpetrator of the rape committed the act more than 5 (five) times which was punished in just one case of rape. The criminal threat received by the perpetrator was very disproportionate when compared to the impact that was borne by the child as a victim who experienced this rape where the child had to bear the shame for the rest of his life while on the other hand the perpetrator was only charged with a relatively light sentence²⁰. So that legal protection for child victims of rape specifically or based on *lex specialist derogate lex generalis* has been regulated in Law Number 23 of 2002 as amended by Law Number 35 of

²⁰ Dudung Mulyadi, “Perlindungan Hukum Bagi Anak Korban Perkosaan Dalam Peradilan Anak,” *Jurnal Ilmiah Galuh Justisi* 6, no. 2 (2018), <https://doi.org/10.25157/jigj.v6i2.1712>.

2014 concerning Child Protection. In particular, Article 81 paragraph (2) of Law Number 35 of 2014 has ruled out the provisions in Article 287 of the Criminal Code, because Article 81 paragraph (2) uses the minimum prison sentence for perpetrators of rape crimes against minors, namely 3 (three) years and the maximum prison sentence is 15 (fifteen) years. The maximum limit for prison sanctions is heavier or higher when compared to the provisions in Article 287 of the Criminal Code where the maximum prison sentence for perpetrators of rape crimes against minors is only 9 (nine) years. With these provisions, this law can be said to pay more attention to the interests of child victims of rape.

The fulfillment of justice for rape victims is not enough to punish the perpetrators, but to restore the suffering felt by the victims and compensation from the perpetrators and from the state for the incident. Victims must get these rights to the fullest²¹. The lack of witness and victim protection became the basis for the birth of Law no. 31 of 2014 which amended Law No.13 of 2006 concerning the Protection of Witnesses and Victims, Article 5 paragraph (1) letters a top. Witnesses and victims of certain crimes will receive increased protection for victims of gross human rights violations, victims of terrorism crimes, victims of human trafficking, victims of torture crimes, perpetrators of sexual violence and victims of serious abuse.

Rights of Children Victims of Rape

Rape can happen to anyone, including children who are vulnerable to becoming victims. Regulations governing the protection of child victims in detail are in Law Number 35 of 2014²². This regulation exists as a form of

²¹ Budi Heryanto, dkk, "Korban Tindak Pidana Pemerkosaan Dalam Perspektif Viktimologi," *Jurnal Hukum Mimbar Justitia* 6, no. 1 (2020), <https://doi.org/10.35194/jhmj.v6i1.1094>.

²² Mastur Mastur, Syamsuddin Pasamai, and Abdul Agis, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual," *Journal of Lex Philosophy (JLP)* 1, no. 2 (2020), <https://doi.org/10.52103/jlp.v1i2.213>; Ahmad Jamaludin, "Perlindungan Hukum Anak Korban Kekerasan Seksual," *JCIC : Jurnal CIC Lembaga Riset Dan Konsultan Sosial* 3, no. 2 (2021), <https://doi.org/10.51486/jbo.v3i2.68>.

commitment that the state is present in protecting victims of sexual violence cases, especially rape that occurs in children. Children based on Article 1 Number 1 of Law no. 35 of 2014 is someone who is not yet 18 (eighteen) years old.

Cases of rape committed by 8 (eight) people taking turns in Banyumas, Central Java are included in cases of rape of children. The victim was 12 (twelve) years old and was still studying at the Junior High School (SMP) level. Victims must obtain justice as a form of protection for the crime of rape. Fulfillment of justice for rape victims, especially children, in addition to criminalizing the perpetrators, namely by restoring the situation for the suffering felt by the victims, obtaining compensation from both the perpetrators and from the state for the events that occurred and fulfilling the rights of the children in them. Law Number 35 of 2014.

The purpose of child protection is based on Article 1 Number 2 of Law no. 35 of 2014, namely all actions taken to guarantee and defend children's rights so that they can develop, participate fully as adults, and are protected from abuse and prejudice. In general, the rights that must be obtained by children have been written in Articles 4 to 18 of Law no. 35 of 2014. Some of these rights include the right to worship according to their religion, the right to education and the right to be able to express and be heard. Whereas for children who are victims of rape or children who are in conflict with the law as explained in Article 17 paragraph (2) of Law no. 35 of 2014, children have the right to confidentiality and receive legal assistance and other assistance as contained in Article 18 of Law no. 35 of 2014. Furthermore, children who are in and around the education unit are required to receive protection from acts of physical, psychological violence, sexual crimes, and other crimes committed by educators, educational staff, fellow students, and/or other parties based on Article 54 Paragraph (1) Law no. 35 of 2014. A rape victim in Banyumas, Central Java, who is known to still be studying in grade 1 (one) of junior high school, was forced to withdraw from school after the school learned about the case that had befallen the victim. The

school principal invited the victim's parents (N) to come to school and then N was asked to make a statement of resignation for his child. The school directed N so that his child pursued Package B or changed schools. Based on Article 9 (1) Law no. 23 of 2002 as amended by Law no. 35 of 2014, every child has the right to receive education and teaching in the context of developing his personality and intelligence level according to his interests and talents. Based on this, the Government, Regional Governments and other state institutions should be able to take responsibility and provide protection for children who are victims of rape so that they can still receive education in accordance with Article 59 Paragraph (1) of Law no. 35 of 2014 which explains that the central level government, local level government, and other state institutions are required to provide extraordinary protection to children who have become victims of sexual violations in this case rape.

Children who are victims of sexual violations in the form of rape are given maximum protection such as timely treatment, physical, psychological and social rehabilitation, as well as measures to prevent disease and other health problems. Furthermore, children from underprivileged families can receive social assistance, protection during the legal process, and psychosocial support from therapy to recovery. According to Law no. 35 of 2014 Article 69A, special protection can be provided through educational efforts on reproductive health, religious and moral values, social rehabilitation, psychosocial support during treatment to recovery, and providing protection and support at all levels of assessment, starting with investigation, prosecution, and examination, carried out in court.

In addition to what has been described above, children as victims of rape also have the right to have an abortion if the child victim of rape becomes pregnant. Based on Article 75 (1) of Law Number 36 of 2009 Concerning Health (hereinafter referred to as Law No. 36 of 2009) it is clear that everyone is prohibited from having an abortion, however in Article 75(2) of Law no. 36 of 2009 confirms once again that this prohibition can

be lifted in certain circumstances, such as when a medical emergency is suspected in the early stages of pregnancy and poses a threat to the mother or fetus. or when the pregnancy is the result of rape, which can cause psychological trauma to the rape victim²³. Rape is a traumatic event for women who become victims. If the rape she experienced resulted in pregnancy, then the trauma can increase²⁴. When a mother suffers from severe medical problems or pregnancy-related complications such as those traumatic, abortion may be the only best option to save her life. A victim of rape can experience physical, emotional and social harm as a result of coercion by the perpetrator in various situations. Having a baby after being raped can exacerbate psychiatric problems. This then makes abortion permissible for rape victims.

Based on Article 76 of Law No. 36 of 2009, an abortion can be carried out if the gestational age experienced at that time has not reached 6 (six) weeks after the first day of the last menstrual cycle. Furthermore, this abortion can be carried out with the exception of medical conditions and the abortion is carried out by medical personnel who meet the requirements and have a certificate issued by the Minister, with the approval of the pregnant woman concerned and her husband, except for rape victims and health service providers who are required to comply with Ministerial regulations. Based on the case of a child rape victim in Banyumas, the victim's gestational age has reached 3 (three) months, so it is very likely that the victim will not be able to obtain the right to have an abortion.

Child victims of sexual violence must receive serious attention and guarantee special protection from the family and the government because victims of sexual violence also need protection so that their rights can be fulfilled²⁵. Therefore, Law no. 23 of 2002 as amended by Law no. 35 of 2014

²³ Gracia Novena Maridjan, "Aborsi Dalam Penerapan Hukum Pidana Di Indonesia," *Lex Crimen* 8, no. 6 (2019).

²⁴ Meliza Cecillia Laduri, "Penegakan Hukum Terhadap Tindakan Aborsi Menurut Undang-Undang Nomor 36 Tahun 2009," *Lex Crimen* V, no. 5 (2016).

²⁵ Ni Made Darmakanti, Ni Putu Rai Yuliantini, and Dewa Gede Sudika Mangku, "Implementasi Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Di Kota

provides legal protection for children in Indonesia, especially those related to problems or cases of rape because this law generally guarantees the fulfillment of children's rights so that they grow, develop in a dignified manner, and can participate optimally and the most important thing is to get protection from various kind of violence²⁶.

Legal Assistance of Child Victims of Rape Case Study in Banyumas

Providing legal assistance to child victims of rape is a matter of great urgency because, as previously explained, children are still not able to live independently. Apart from that, several international conventions also guarantee children's human rights along with women's rights. This is because children and women belong to groups that are weak, unprotected so that they are always at risk and at risk of a danger, one of which is sexual violence. This high risk makes children and women have the possibility to become victims of an crime²⁷.

Children are very vulnerable to becoming victims of sexual violence, one of which is because of differences in power relations between perpetrators and victims. And this will get worse when the perpetrator has control over the victim. The control referred to here can be in the form of social status or patron-client relationships such as parent-child or community leaders-citizens²⁸. This control is what happened to the victim with eight perpetrators, the victim was unable to resist because the perpetrator had lured money from her, this was based on the classification of acts of rape, so

Singaraja,” *Jurnal Komunitas Yustisia* 5, no. 2 (2022), <https://doi.org/10.23887/jatayu.v5i2.51446>.

²⁶ Diana Yusyanti, “Perlindungan Hukum Terhadap Anak Korban Dari Pelaku Tindak Pidana Kekerasan Seksual,” *Jurnal Penelitian Hukum De Jure* 20, no. 4 (2020), <https://doi.org/10.30641/dejure.2020.v20.619-636>.

²⁷ Yonna Beatrix Salamor Deassy J.A. Hehanussa, “Membangun Kesadaran Hukum Perempuan Dan Anak Dalam Penanggulangan Tindak Pidana Kekerasan Seksual,” *Keberlanjutan Program Pemberdayaan Masyarakat Era Revolusi Industri 4.0*, 2019; Deassy J A Hehanussa and Yonna Beatrix Salamor, “Membangun Kesadaran Hukum Perempuan Dan Anak Seksual,” *Sabdamas* 1, no. 1 (2019).

²⁸ Deassy J.A. Hehanussa, “Membangun Kesadaran Hukum Perempuan Dan Anak Dalam Penanggulangan Tindak Pidana Kekerasan Seksual.”

she was included in the Exploitation class. Rape in which the perpetrator takes the opportunity to have sexual relations with the position of the victim who depends on him.

Every Indonesian citizen has the same right to obtain legal protection without exception, because legal protection has become a constitutional right of every Indonesian citizen as stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which essentially explains that everyone has the same rights to recognition, guarantees, protection and legal certainty and to receive equal treatment before the law²⁹. Specifically in cases of rape with children as victims it is regulated in Article 18 of Law no. 23 of 2002 which states that "every child who is a victim or perpetrator of a crime has the right to obtain legal assistance and other assistance". Legal aid in this case refers to Law no. 16 of 2011 Article 1 point 1 which states that "Legal aid is legal services provided by legal aid providers free of charge to legal aid recipients". In the case of rape committed by eight persons against a child who was still in junior high school until she became pregnant and had to be expelled from school, it is necessary to obtain optimal legal assistance for the victim because the sexual violence she experienced had a negative impact on the victim's physical and psychological aspects and the victim also still has to undergo trial as a witness which of course weighs heavily on him.

The position of minors as in this case is very vulnerable. As a child who is still in grade 1 of junior high school, of course he is not able to live independently and is still very dependent on other people to provide protection³⁰. However, the question is still how far is the protection in the form of legal assistance received by the child victim of rape by 8 people who are his own neighbors? Meanwhile, in fact what happened on the ground was that the rights of the child who had been the victim of this heinous act

²⁹ Angga Angga and Ridwan Arifin, "Penerapan Bantuan Hukum Bagi Masyarakat Kurang Mampu Di Indonesia," *DIVERSI: Jurnal Hukum* 4, no. 2 (2019), <https://doi.org/10.32503/diversi.v4i2.374>.

³⁰ Eko Riyadi, "Perlindungan Hukum Terhadap Anak Sebagai Korban Marital Rape," *Viva Themis: Jurnal Ilmu Hukum* 5, no. 2 (2022), <https://doi.org/10.24967/vt.v5i2.1760>.

lost his rights, one of which was the right to get a proper education, because he was expelled from the school where he studied. This is of course very contrary to the concept of child protection contained in Article 20 of Law no. 35 of 2014 which gives obligations and responsibilities to the state and government to carry out child protection, but in this case the protection that should be provided is not visible, because the local Education Office does not evaluate school policies that force these rape victims to leave school, but only trying to provide education through Package B while the one who violated the rights of the child victim of rape for the first time, namely from the school, did not receive any evaluation at all.

As previously explained that children who are victims of a crime have the right to obtain legal assistance and other assistance. If it is related to the rape case of a junior high school student who was committed by eight of his neighbours, then the victim has the right to get the services of a lawyer free of charge. In addition, because victims can receive legal assistance, in accordance with Article 12 of Law no. 16 of 2011 victims have the right to get legal assistance until the problems they face are resolved or the case is inkracht as long as they do not revoke the power of attorney; obtain legal assistance in accordance with legal aid standards and/or an advocate's code of ethics; and obtain information and documents related to the implementation of the provision of legal aid in accordance with the provisions of laws and regulations.

In order to avoid the crime of rape with child victims, it is necessary to carry out preventive measures, namely efforts made before the occurrence of a crime, this effort is very important to increase public awareness about the high risk that a child may have at any time to become a victim of sexual violence. in the form of rape by criminals. The form of preventive measures that can be taken is to provide counseling to the community to continue to protect their children and supervise the association of children to prevent a crime from occurring while reminding the public to be more sensitive to the surrounding environment, especially at night or in places that have the

potential to occur. rape crime. However, if the crime of rape has already occurred, then there is a need for understanding from the community not to see the rape victim as a shameful disgrace because in reality she is just a victim who cannot do anything and she still has the same rights as the rest of society. This is where the importance of legal aid is to assist victims and provide guarantees of protection for victims so they do not receive inhumane treatment. For this reason, the provision of legal aid must be implemented effectively and properly disseminated to the community so that all parties can know about the rights of underage rape victims to get legal aid free of charge.

Conclusion

Based on the results of the discussion in above it can be concluded that legal aid is a service provided by legal organizations or institutions to help people who have legal problems but do not have the financial ability to pay legal fees or advocate services. In the case of rape of a junior high school student by eight people who are neighbors themselves, it is appropriate to receive legal assistance, this is reinforced by Article 18 of Law no. 23 of 2002 which reads "every child who is a victim or perpetrator of a crime has the right to obtain legal assistance and other assistance". If the child who is a victim of rape gets appropriate legal assistance, then the victim will get legal protection for every right she has. However, the legal assistance that should have been obtained to receive legal protection for the child victim of rape has not been seen because the victim's right to get a proper education has been taken away by forcibly removing her from junior high school. For this reason, it is necessary to have legal protection in the form of providing legal assistance to child victims of rape by eight of their neighbors to protect the rights of victims who are still minors.

Even though it is clear that there are laws and regulations that protect child victims of rape, the implementation of this form of legal protection must also be considered. The large number of rape cases in Indonesia validates that preventive and repressive actions from society and the government are needed to resolve existing problems. From a preventive perspective, the community must increase their awareness of the possibility of the crime of rape against children and the government must also provide counseling to the public to continue to supervise and protect their children. From a repressive perspective, society must be willing to cooperate in

resolving rape cases and not regard rape victims as a disgrace. In this case, the provision of legal assistance to child victims of rape can be a form of repressive legal protection from the government for the rape victims themselves.

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After climbing a great hill. One only finds that
there are many more hills to climb