

RESEARCH ARTICLE

# CHILDREN AS VICTIMS OF SEXUAL ABUSE: HAS THE LAW PROVIDED ENOUGH JUSTICE?

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*The case of child sexual abuse continues to increase over time. Crimes of sexual violence against children are an example of the vulnerability of a child's position, especially for sexual purposes. The image of a child who has been placed as a sexual object has far-reaching implications for a child's life, so she must always face violence, coercion, and physical and psychological violence. Children have basic human rights, like adults, protection of children's rights is not many people come to think and do concrete steps. Therefore, an attempt to protect the rights of children violated by adults, families, and their own environment, even bias so its own parents (adoptive parents / stepparents) and neglect of parents who are less supervising the baby, resulting in an undesirable thing. Criminality is all forms of speech, and behavior that harm society and attack the safety of citizens, both those covered by law and those not yet covered by the criminal law. In carrying out the guidance and protection of children need the role of society through institutions and organizations.*

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## I. INTRODUCTION

A crime or a criminal offense can basically happen to anyone and can be treated by a woman, a man, or even a child. Children who are the next generation of the nation. The protection of Indonesian children means protecting the potential of human resources and building fully Indonesians towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Constitution.<sup>1</sup>

Sexual harassment of children needs to take a serious concern considering a the result of sexual violence against children will cause a problem for the child's mental development. So the child will not be able to grow and develop properly as children in general. Every child has a Human Right Man, as with a right that is owned by an adult person, not many people contribute to thinking and willing to take concrete steps to protect the rights of the child.

Children are individuals who have not matured either physically, or mentally let alone social. So when compared with adults, clearly children will be more at risk of violence and neglect. Broadly speaking, the impact of violence against children, among others: a. Children become negative and aggressive and easily frustrated. b. Being very passive and apathetic. c. Not having his own personality, what he's done all his life is just fulfilling his parents' wishes. d. Low self e.

Difficult to establish relationships with other individuals. Sexual offenses are always related to the actions of the body or body parts, especially in parts that can stimulate sexual desire. According to article 1 point 2 of Law No. 23 of 2002 on child protection. According to Article 2 paragraph (3) and (4) of Law Number 4 Year 1979 regarding Child Welfare.

Both verses provide a rationale that child protection intends to seek a righteous and just treatment, to achieve a general well-being. The consequences of the trauma also hinder the formation of a strong nation. With this law enforcement against victims of special sexual harassment actions against children need to be assessed because it involves the welfare of children and it is a right that every child has. The reality in Indonesian society is still often the occurrence of sexual crimes that occur to children. This is very contrary to Law No. 23 of 2002 on Protection of Children. And in recent years crimes against both children and adults continue to escalate the crime. Social problems of harassment and criminal acts in a sexual violence until now has been done by many people of Indonesia both done by the elderly and adults and continue to be the victims are mostly a child.

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<sup>1</sup> Nashriana, *Perlindungan Hukum Pidana bagi Anak di Indonesia*, Jakarta : Rajawali Pers, 2011.

This crime is committed by none other than those who still have a close relationship or even just be well known by the victim, bias alone neighbors and their own relatives. This shows that a family figure that should be a safe place for a child and provide a protection for a child would be a place where sexual crimes and sexual harassment occur.

With the rampant cases of sexual harassment crimes against both children that occur in the school environment and an environment that he considered safe / environment around the residence. So it looks still far away a friendly and safe environment for children.

Child Sexual Abuse involves persuading or coercing a child to take part in a sexual activity, or encouraging a child to engage in inappropriate sexual conduct including completion or attempted sexual acts or contact or non-contact sexual contact with a child by adults. It may take several forms: penetration - between the mouth, the penis, the vulva of the child's anus and another individual: the contact deliberately touches the genitals, buttocks, or breasts with or without clothing (excluding normal treatment): non-contact-exposure to sexual activity , film making, prostitution.

The range of sexual harassment is wide-ranging, including: flirting, naughty whistling, sexually suggestive comments, porn humor, pinching, patting or touching on specific body parts, sexual cues, dating calls or threats, , until rape. A number of studies have confirmed that many of the abuses are committed by family members.

Cases of violence against men, women and even children often become headlines in various media. From a legal marriage will have legal consequences among them are children who was born of the marriage became a legitimate child, the obligation of the husband to finance and to educate the children and their wives and to seek shelter together, have the right to inherit each other between husband and wife and children with parents, the father has the right to be the child's marriage guardian and if one of the husbands or wives dies one, the other is entitled be a watchdog against children and property.

The Marriage Law as the legal basis governing marriage in general, is intended to provide protection for the people, namely to the position of husband, wife, and children born of legal marriage, in the sense of being carried out in accordance with religion and their respective beliefs and also recorded. Types of child abuse are psychologically diverse. The most common is the type of emotional violence While the types of violence against women on a frequent basis can be divided into 3 major groups namely domestic violence, sexual harassment and rape.

Children should be guarded and protected, because children also have the right to be respected existence. Sexual violence against children can occur anytime and anywhere. Anyone can be a perpetrator of sexual violence against children, in the absence of special characteristics. The

perpetrators of child sexual abuse may be close to the child, who may come from various backgrounds. Pedophilia never stops, the perpetrators of sexual violence against children also tend to modify different targets, and anyone can be a target of sexual violence, even children or siblings themselves, that is why perpetrators of sexual violence against children can be regarded as a predator.

This is what makes children helpless when threatened not to tell what happened. Almost every case is revealed, the perpetrator is a person close to the victim. Sadly, most sex offenders are the ones known to their victims; about 30% are the family of the child, most often a brother, a father, an uncle, or a cousin; about 60% are other acquaintances such as 'friends' of family, caregiver, or neighbor, stranger is a violator of about 10% in case of child sexual abuse.

Violence against women and children as a global problem, is already worrying Indonesia as a developing country, holds the title bad in the case of human rights violations, one of them violation of human rights of women and children Today is violence against women and children is very much worried about especially among those who care about women.<sup>2</sup>

This research is the Juridical-Normative approach method, research on the legal principles contained in the rules of regulations, related scientific literature and writings with the object of research and the juridical approach of the vicarious, can be revealed and obtained a profound meaning of position victims and protection.<sup>3</sup>

## II. CAUSES OF SEXUAL VIOLENCE AGAINST CHILDREN

There are various kinds of sexual crimes such as adultery, homosexuality, lesbian, prostitution, fornication, rape, promiscuity (sexual intercourse outside marriage bonds by multiple partners).<sup>4</sup> Many theories that explain how domestic violence occurs, one of which is the theory associated with stress in the family (family stress). Stress in the family can come from children, parents, or certain situations and conditions. However, acts of violence against children is a complex

<sup>2</sup> Ali, H. Zainuddin, *Metode Penelitian Hukum*, Jakarta : Penerbit Sinar Grafika, 2009.

<sup>3</sup> Rasdi, "Perlindungan Anak Dalam Proses Penyidikan" *Jurnal Pandecta* , Volume. 2 No.2

<sup>4</sup> Ahmad Sandi, *Hukum Kebiri Bagi Pelaku Pedofilia dalam Prespektif Hukum Islam dan Peluang Penerapannya di Indonesia*. Jakarta, 2015.

issue, because it has serious negative impacts on the victims and the surrounding environment.<sup>5</sup>

All forms of inhumane treatment, in an implementation cannot be separated from the existence of an element of violence. Terry E Lawson states that forms of violence against children, from devotion to rape and murder can be classified in 4 (four) kinds:

- 1) Physical abuse (physical violence), shows the injury found in a child not because of an
- 2) accident but the injury results from beatings with objects or multiple repeated attacks.
- 3) Physical neglect, this category of violence can be generally identified from a child's lethargy, pallor and malnutrition. Children are usually in a state of dirty / unhealthy, inadequate clothing. It should also be seen from the social and economic circumstances of a family.
- 4) Emotional abuse (emotional violence), showing the case where the parent / guardian failed to provide a loving environment for a child to bias grow, learn, and grow. The failures are manifested by disregarding, discriminating, terrorizing, threatening or openly rejecting the child.
- 5) Sexual abuse (sexual violence), referring to any sexual activity.<sup>6</sup>

The Criminal Code does not provide an authentic understanding of what violence means. It is only mentioned in article 89 that which is equated with violence, makes people become unconscious or powerless or weak. Child abuse or mistreatment in children is an arbitrary act perpetrated by a person who is supposed to maintain and protect the anal, physically, sexually, and emotionally.<sup>7</sup>

The cause of the occurrence of sexual crimes against children, one of which is the lack of information about reproductive health and equipment and Child Protection Act among children today. Moreover the negative impact of technology such as internet and social media.

In fact, cases of sexual violence against minors are also biased due to the permissive attitude of teenagers who branded an extramarital sex as a matter of course. So it is clear that the factors causing a sexual violence in children can be seen from two sides namely the side of the perpetrator and the side of the victim.

<sup>5</sup> Anggun Lestari Suryamizon, *Perlindungan Hukum Preventif Terhadap Kekerasan Perempuan dan Anak Dalam Perspektif Hukum Hak Asasi Manusia*, Jurnal Perempuan, Agama dan Jender, Volume 16, No. 2.

<sup>6</sup> Supeno, *Kriminalisasi Anak : Tawaran Gagasan Radikal Peradilan Anak Tanpa Pemidanaan*, Jakarta : PT Gramedia Pustaka Utama, 2010.

<sup>7</sup> Daisy Widiastuti dan Rini Sekartani, *Deteksi Dini, Faktor Risiko, dan Dampak Perlakuan Salah Pada Anak*, Jurnal Sari Pediatri Vol.7 No.2 September 2005

On the part of the perpetrator, the perpetrator has mental illness (mental illness) that is unable to control the emotional and sexual desire, the lightness of the sanction that makes the perpetrator to return to his crime, and the motive of revenge as a result of the perpetrator had experienced sexual assault while he was still small so that he has a grudge and the alaska to children when he was growing up.

If we look at the side of the victim themselves, sexual violence occurs due to ignorance and lack of understanding about the forms of sexual violence against the victim without realizing by the victim directly, reluctance of the victim's family to report the case because often the perpetrator is the nearest person or even relatives of the victims themselves (it actually results in the fact that the perpetrators are in a safe position to engage in sexual violence with their wishes), the lack of sanctions and evidence that makes technical obstacles to the law enforcement officers to continue the case, and the latter in some cases in Indonesia the judge does not impose a maximum criminal verdict against the perpetrator so that the victim felt did not get justice for their child.

The occurrence of violence against children is caused by various factors that influence it. According to Edi Soeharto, violence against children is generally caused by internal factors derived from the child itself and externally derived from family and community conditions such as:

- 1) Economic factors
- 2) Family broke or broken home due to divorce, absence of mother for long period of time or family without father
- 3) Repetition of the history of violence: old people who were often abandoned or abused often treated their children with the same pattern
- 4) Poor social environment conditions, slums, displaced children's playgrounds, indifference to exploitation, lack of legal tools, lack of stable social control.<sup>8</sup>

### III. LEGAL PROTECTION AGAINST CHILDREN AS VICTIMS OF SEXUAL VIOLENCE

Article 1 number (2) of Law Number 13 Year 2006 concerning Protection of Witness and Victim states that the victim is a person suffering physical, mental, or economic loss caused by a crime.

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<sup>8</sup> Wiwid Noor Rakhmad, *Kekerasan Terhadap Anak Dalam Konstruksi Koran Tempo*, Jurnal Ilmu Sosial, Volume 15 No. 1.

Victims of a crime (crime) are often disillusioned by the practices of law which are more inclined to pay attention and even protect the basic rights of victims more neglected.

Legal protection of children is an effort to protect various fundamental rights and freedom of children, as well as various interests related to the welfare of children. Legal protection for children covers a wide range.

In the perspective of statehood, the state to protect its citizens, including to the child, can be found in the preamble of the 1945 Constitution reflected in the fourth paragraph, in its elaboration CHAPTER XA on Human Rights, especially for the protection of children, Article 28B paragraph (2) of the 1945 Constitution it is stated that every child has the right to survival, growth and development, and is entitled to protection from violence and discrimination.

The protection of the law is all efforts made consciously by every person or government agency, even the private sector that aims to seek the security, control and fulfillment of living welfare in accordance with existing human rights (Law No. 39 of 1999 on Human Rights).

Law No.13 of 2006 on Protection of Witnesses and Victims. Human rights are a fundamental right, giving God the possession of man during his life and after, and can not be repealed at will without any existing, clear, and true legal provisions. Furthermore, Muliadi reiterated the reason for the need for the state to provide flexibility for social affected persons and social solidarity arguments.

In order to achieve this goal, its implementation can not be ignored from the basic principles of conversion in children's rights and culture. Instrument of Law and Human Rights Instrument. The Geneva Declaration on the Rights of the Child (Geneva Declaration on the Rights of the Child) is the first international document containing the words "children and women of all nations" who accept that "children should be provided with the necessary tools for normal development, both materially and spiritually".

In the development of the late 1980s, the Convention on the Rights of the Child introduced four (4) child rights, namely the right to survival, protection rights, , rights to grow (development rights) and participating rights (participation rights).<sup>9</sup>

Then this Convention is ratified by the State of Indonesia through Presidential Decree No. 36 of 1990. Thus, only with Law No. 39 of 1999 on Human Rights stipulates that every child has the right to obtain legal

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<sup>9</sup> Supeno, *Kriminalisasi Anak : Tawaran Gagasan Radikal Peradilan Anak Tanpa Pemidanaan*, Jakarta : PT Gramedia Pustaka Utama, 2010.

protection from all forms of physical or mental violence and sexual harassment.<sup>10</sup>

The child protection law also states that "the State, the Government and the Regional Government are obliged and responsible for providing support for facilities, infrastructure and the availability of human resources in the provision of child protection."<sup>11</sup> In relation to sexual violence against children, the Child Protection Act determines the prohibition of violence or the threat of violence forcing a child to have sexual intercourse with him or another person.<sup>12</sup>

Furthermore, this law expresses a prohibition on the perpetration of violence or the threat of violence, forcing, tricking, committing a series of lies, or persuading the Child to commit or allow obscene acts.

A problem related to children is not a small problem but in the case of children is the next generation of nation and State. Thus it is appropriate for the previous generation to establish, maintain, and secure the interests of the child.

Maintenance, assurance, and security of interest should be done by the parties who take care of the family. Judging from the theory of Legal Protection, Child Protection is an attempt to establish situations and conditions that enable the executor of the rights and obligations of the child humanely. Implementation of a legal protection for a victimized child is not maximally as provided by law.

Although that has not been done as far as possible, but there are some forms of legal protection that has been given to a child who became victims in accordance with Law no. 35 Year 2014 contained in Article 64 paragraph (3), that the child as victim get:

- 1) Rehabilitation both within institutions and outside institutions
- 2) Efforts to protect and identity coverage through mass media to avoid labeling
- 3) Providing safety assurance for victim witnesses and expert witnesses both physically, mentally, and socially
- 4) Giving of accessibility to obtain information on case progress.

The juvenile justice system is one form of protection provided by law to a child who has committed a crime.

The orientation of the whole process of child criminal justice should be aimed at the child's own welfare, based on the best interest for children principle that there are two goals for the establishment of juvenile justice, namely:

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<sup>10</sup> Art. 58 dn 65 Undang-undang Nomor 39 Tahun 1999 Hak Asasi Manusia.

<sup>11</sup> Art. 76 D Undang-undang Nomor 35 Tahun 2014 tentang perubahan Atas undang-undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.

<sup>12</sup> Art. 76 E Undang-undang Nomor 35 Tahun 2014 tentang perubahan Atas undang-undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.



- 1) Promoting the welfare of the child (the promotion of the well being of the juvenile) means that this principle of child welfare should be regarded as the main focus in the juvenile justice system. This principle may serve as a basis for not applying sanctions that are purely criminal, or punitive.
- 2) Prioritizing the principle of proportionality is a means to curb the use of punitive sanctions in the sense of retaliation.

This is emphasized by Paul H. Hann arguing that the juvenile court should not be merely a criminal justice for children and should not function solely as a social institution (Muladi 1992: 114). Such general guarantees are the most basic procedural guarantees, including the following:

- 1) The right to be informed of the allegations
- 2) The right to remain silent,
- 3) The right to obtain legal counsel,
- 4) Right to the presence of a parent / guardian,
- 5) The right to expose witnesses and cross-examination of witnesses
- 6) Right to appeal to a higher level.

Law enforcement is not a mere exercise legislation only, but covers the execution of judges' rulings. In other words, law enforcement is also an effort to implement legal protection of the people, which must be regulated in positive law in order to be understood and obeyed, so that all will be treated equally in law, so that the protection of the law against the rights of the people can be guaranteed.<sup>13</sup>

And with regard to criminal provisions, Article 81 and Article 82 of the Child Protection Law give a maximum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5.000.000.000,00 (five billion rupiah). The criminal provisions imposed in this law are more severe than the previous law which only impose a minimum of 3 (three) years and a maximum of 15 (fifteen) years imprisonment and a maximum fine of Rp. 300.000.000,00 (three hundred million rupiah) and at least Rp.60.000.000, -.

This is apparently intended to provide a deterrent effect to the perpetrator so as to prevent the occurrence of repetition of violent crime and prevent others from doing the same deeds.

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<sup>13</sup> Hairani Siregar, "Form Of Violence Eperienced by Women Citizens Complex Dinas Peternakan North Sumatera Province". *Jurnal Ilmu Kesejahteraan Sosial*. Vol. 14, No. 1.

#### IV. FACTORS INHIBITING THE CASE HANDLING PROCESS OF SEXUAL ABUSE CRIME WITH CHILD VICTIMS

In general terms this article describes the family and the child becomes a member. The above legal instruments prove that the law in Indonesia is paying attention to presence of the child. As for things to be understood again for preventing violence against children is the principle of protection against the child.<sup>14</sup>

The victim and the victim's family did not want to give testimony there will be domestic violence because of embarrassment, Case Domestic violence is not followed up at a later stage because the victim chose with draws its reasons for maintaining the family's unity meet material requirements such as the absence or escape of action.<sup>15</sup>

The investigation of the crime of sexual violence experienced by the child is an initial step or process of law enforcement in an attempt to crack down on sexual violence with child victims as the objective of the formulation of law number 23 year 2002 as amended by law number 35 year 2014 on protection child.

In carrying out its duties on the investigation of criminal acts of sexual violence with child victims it is not uncommon to experience obstacles. The first obstacle, gathering sufficient initial evidence. In general, sexual violence with child victims experienced by the victim is not witnessed by anyone other than the victim himself who experienced it.

Second, the victim's description is not straightforward. It can be seen that the victim have their own fears, shame and trauma over what happened to them. The victim did not testify because of threats from certain parties or fear of ignorance known to the public, this is because the victim of sexual abuse other than physical, also experienced great inner pressure. The manipulation of the perpetrator often rejects allegations that he is the culprit, this strategy is used by the offender by accusing the victim of lying and making engineering. In addition, the assumption that matters relating to family affairs are not worth being interfered with by others.

As a victim and also a witness in this case the victim should provide actual information in accordance with Article 116 paragraph 2 of the Criminal Procedure Code and in the process of investigating the

<sup>14</sup> Lilik Purwastuti Yudaningsih, "Kekerasan Terhadap Perempuan Dalam Perspektif Pembaharuan Hukum Pidana". *Jurnal Ilmu Hukum*. Volume 2.

<sup>15</sup> Rubi Hadiarti, "Tindak Pidana Kekerasan Terhadap Perempuan". *Jurnal Dinamika Hukum*. Volume 11.No.2.

information given to the investigator without any pressure from anyone and in any form (Article 117 paragraph (2) KUHAP).

Third, the Witness did not want to come in the examination<sup>9</sup>. According to an interview with Mr. Aiptu Bambang "the witness who is a layman who does not know about the law usually refuses to conduct the process of investigation and during the trial, the reason they are afraid if asked something, fear of going to jail, in addition to fear that witnesses have other reasons the witness did not want dealing with law enforcement officers.

While the purpose of additional terms is the obligation to report periodically to the Public Counselor. The final stage in the process of examining a case is the final judgment (verdict) by the judge.<sup>16</sup>

## V. CONSLUSION

The protection of the law will give birth to the recognition and protection of human rights in its form as individual beings and social beings, in a unitary state which upholds the spirit of kinship for the achievement of the welfare of society. The development of law against the protection of children victims of sexual crimes demanded should promote honesty and sincerity in law enforcement. They must have empathy and concern for the suffering experienced by the people of this nation. The interests of the people (welfare and happiness) should be the point of orientation and the ultimate goal of law implementation. Forms of legal protection against children who become victims of action Rape penalty. The protective measures provided by the government to the child who become victims of rehabilitation efforts conducted within a institutions or outside institutions, safeguarding the identity of victims from the public, providing safety assurance to victim witnesses namely children and expert witnesses, and giving of accessibility to get information about the progress of the case. There are several laws governing the form protection provided to victims, namely: the Constitution The Republic of Indonesia 1945, the Criminal Procedure Code (KUHAP), Law Number 3 Year 1997 on Juvenile Court, Law Number 39 Year 1999 on Human Rights, Law Number 23 of 2002 on Child Protection, Law Number 23 of 2004 on the Elimination of Domestic Violence Ladder, Law Number 13 Year 2006 on Witness Protection and Victims, Law Number 11 Year 2012 on the Judicial System Child Crime and Law Number 4 Year 1979 About Child Welfare. Urgency Legal Protection Against Children Who Become Victims Rape Crime. The basic idea of the need for legal protection against children is.

<sup>16</sup> Syaifullah Yophi Ardiyanto, *Perlindungan Hukum terhadap Anak sebagai Korban*, Jurnal Ilmu Hukum, Vol.3, No.1

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