

Legal Analysis of Children as Victims of Sexual Violence

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ABSTRACT

This study aims to analyze the factors that cause children to become victims of sexual violence committed by perpetrators of crimes and obstacles in providing legal protection for children as victims of sexual violence. The applied research method is normative legal research, leading to the identification of legal rules, principles, and doctrines in response to the legal problems faced. The scientific approach in this study is based on the disciplines and working principles of normative legal science, focusing on the analysis of law itself. The results of this study show that legal protection measures provided for victims of underage sexual relations and rape in the criminal justice system are carried out through preventive and repressive approaches, both by the community and the government (through law enforcement officials), such as providing protection/supervision from various threats that can endanger the lives of victims, providing adequate medical and legal assistance, examination and judicial process. This research has significant implications in identifying the triggering factors of sexual violence against children and challenges in their legal protection. The normative legal research approach not only provides insight into relevant legal aspects, but also explores legal principles and doctrines to formulate solutions to these problems.

INTRODUCTION

Children as creatures of God Almighty have basic rights like other human beings, so no human or other party can take away these rights. In the life of the nation and state, children are the future of the nation and the next generation of the nation's ideals so that every child has the right to survival, growth and development, participation and is entitled to protection from acts of violence and discrimination as well as civil rights and freedoms.(Tjahjanto, 2008).

The position of children in society is very vulnerable considering their physical and mental conditions that are not yet strong and mature. The number of cases of decency crimes lately actually places children who are most often involved in these crimes, as perpetrators or victims. A proper understanding of children's rights is clearly very important and the main thing to do considering that children have all the hopes of the Indonesian nation. Thus, it can be understood that children are a form of investment which is an indicator of the success of a nation in carrying out development. The success of child development will determine the quality of human resources in the future(Widodo, 2016). Article 28 B paragraph (2) of the 1945 Constitution of the Republic

of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia) reads that (Sugiyantica, 2014):

Children have a strategic role and the state guarantees the rights of every child to survival, growth and development as well as protection from violence and discrimination. Therefore, the best interests of children should be lived as the best interests for the survival of mankind.

The presence of Law Number 35 of 2014 concerning Child Protection has provided the widest opportunity for a child to grow and develop optimally both physically and mentally so that an ideal generation will be created. Therefore, if there is sexual violence against children, of course this action is a form of child abuse.

If a child becomes a victim of crime, then for legal protection, of course, more attention must be paid because children are the next generation of the nation. For crimes of sexual violence experienced by child victims, it certainly has a traumatic effect or a deep bad memory on the child, this affects the behavior, lifestyle and behavior of the child in the future. Thus, the increasing number of cases of sexual violence against children proves that this problem is not just an ordinary problem. However, it is a serious problem that must be addressed by the government.

The definition of sexual violence is often confused. Whether or not there is an element of physical violence is often used as a criterion for categorizing acts of sexual abuse against children as crimes or not. Sexual harassment of children itself still tends to be narrowed down, meaning that it is limited to forms of sexual contact by eliminating non-contact sexual harassment forms such as pornography. Whether or not there is an element of coercion is actually not significant in cases of sexual crimes against children because of different understandings about sex between adults and children.

Sexual violence is considered a crime with a fairly high level of cruelty and is seen as very demeaning to human dignity. Punishment of perpetrators of sexual violence does not eliminate the traumatic feelings suffered by the child. Children are the pillar of the family and the successors of the nation must be protected. But the fact is that the rise of cases of sexual violence seems to make us all aware that children need to be protected. So many children who experience this tragic thing are victims of their families and in today's society.

The words "violence" and "sexual" are two tribes that have different meanings. If traced, the word violence is in harmony with the phrase "violence" in English. The word is closely related to the Latin words *visi* and *latus*, the first meaning is power or strength while the second is strength.

Child abuse is more of a form of physical abuse in the presence of marks or wounds on the child's body. If violence against children in the household is committed by parents, then it can be called domestic violence. Acts of domestic violence that are included in acts of domestic violence are giving suffering both physically and mentally beyond certain limits to other people who are in the same house; such as spouses, children or parents and the acts of violence are committed at home.

There is no single specific characteristic or personality type that can be identified from a perpetrator of sexual violence against children. In other words, anyone can become a perpetrator of sexual violence against children or sexual violence. The ability of the perpetrator to control the victim, either by deception or threats and violence, makes it difficult to avoid this crime.

Data recorded at the Indonesian Child Protection Commission (hereinafter abbreviated as KPAI) shows that cases of sexual violence entering their institutions continue to increase. Various violations of children's rights in 2021 still occur, both violations related to the fulfilment of rights and related to special protection of children. Based on quite fluctuating public complaint data, in 2019 there were 4,369 cases, in 2020 there were 6,519 cases, and in 2021 there were 5,953 cases, with details of cases of fulfilling the rights of the child 2971 cases, and special protection for children 2982. 2,982 cases. The trend of cases in the special protection cluster for children in 2021 is dominated by the 6 highest cases, namely first, child victims of physical and/or psychological violence reaching 1,138 cases; second, child victims of sexual crimes reached 859 cases; third, child victims of pornography and cybercrime totaling 345 cases; fourth, child victims

of abuse and neglect reached 175 cases; fifth, 147 cases of children being exploited economically and/or sexually; and sixth, children dealing with the law as perpetrators in 126 cases(Reza, 2014).

Cases of physical and psychological violence, child victims of abuse reached 574 cases, child victims of psychological violence 515 cases, child victims of murder 35 cases, and child victims of brawls there were 14 cases. Meanwhile, the highest complaints of cases of sexual crimes against children came from 536 cases (62%) of children as victims of sexual abuse, 285 cases (33%) of children as victims of rape/sexual violence, 29 cases of same-sex abuse of children (3%) , and children as victims of sexual violence, rape/sexual intercourse in 9 cases (1%)(Reza, 2014)

From the perspective of the perpetrators, the perpetrators who committed physical and/or psychological violence against victims were generally people who were known to the victims and to a lesser extent unknown to the victims. The perpetrators were quite varied, namely friends of the victims, neighbours, acquaintances of the victims, parents, educators and education staff in the education unit and apparatus.

Based on the description of the data above, it indicates that children are a group that is very vulnerable to crimes of sexual violence because children are always positioned as weak or helpless and have a high dependence on the adults around them. This is what makes children helpless when threatened not to tell what happened. In almost every case that is uncovered, the perpetrator is someone close to the victim.

Child protection provided by the state must be able to guarantee the optimal fulfilment of children's rights for the realization of justice and welfare for children. However, the protection provided does not violate the rights of others and also does not violate religious norms as norms that must be upheld for the purity of their teachings. Child protection aims to guarantee the fulfilment of children's rights so that they can live, grow and develop and participate optimally in accordance with human dignity.

Based on the background that has been formulated above, the writer is interested in raising this problem to become a research entitled: "Legal Analysis of Offenders and Children as Victims of Sexual Violence.

METHODS

This type of research falls into the category of normative legal research, because in its analysis it uses library materials as a source of research data. Normative research here is to analyze the factors that cause children to become victims of sexual violence committed by those closest to them and the obstacles in providing legal protection for children as victims of sexual violence crimes. In legal research, this type is included in the category of normative legal research or library legal research, therefore in this study library materials constitute basic data which in research science is classified as secondary data.

The data source is the object from which the data was obtained because this research is classified as literature research, so all data is secondary data consisting of legal materials. Therefore, this research is a normative research in which library materials are the basis for (knowledge) research classified as secondary data.

This research obtains from original sources regarding the subject matter being discussed by this writer. Data sources can be obtained through:

- 1) The Criminal Code (KUHP)
- 2) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.
- 3) Law Number 13 of 2006 Concerning the Protection of Witnesses and Victims.
- 4) Law No. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection.
- 5) Law No. 39 of 1999 concerning Human Rights.
- 6) Presidential Regulation Number 75 of 2020 Concerning the Implementation of the Rights of Child Victims and Children of Witnesses.

RESULTS AND DISCUSSION

A. Factors Causing Children and Women to Become Victims of Sexual Violence Perpetrated by Criminals

Crime against children is increasing day by day, especially sexual violence against children which has recently become the most common case in Indonesia, especially in the City of Ternate, North Maluku Province, as shown by the number of cases of sexual intercourse with underage children at the Ternate Resort Police, as follows:

Table 1
Number of Underage Sexual Affair Cases at the Ternate Resort Police

No	Year	Frequency	Percentage%
1	2019	2	8.33
2	2020	13	54.17
3	2021	5	20.83
4	2022	4	16.67
Total		24	100

Source: Ternate Police PPA Unit

Based on the data table for the crime of intercourse mentioned above during the last 4 (four) years from 2019 – 2022 in Ternate City there were 24 (twenty four) cases of crime of intercourse against minors, each totaling 2 cases (8.33 %) in 2019, whereas in 2020 there was an increase in the number of reported cases to 13 cases (54.17%), in 2021 the number of cases fell again to 5 cases (20.83%), and again decreased from 5 cases to 4 cases (16.67%) in August 2022.

This shows that cases of rape reported to the Ternate Resort Police, from year to year cases of sexual intercourse with minors fluctuate quite a bit, that is, they do not decrease but are not permanent, that is, they can increase and vice versa, they can also decrease. With this trend in cases, it is very worrying for law enforcement and the people in Ternat City because children are vulnerable to becoming victims of criminal acts of intercourse.

From the table above it can be seen that the number of cases of sexual violence against children from 2019 to 2021 is 41 cases with various causative factors. There are several factors in the occurrence of sexual violence against children, namely as follows:

1. Environmental factor

Sexual harassment and violence against children has become a familiar phenomenon in society that makes people feel afraid and worried about the child's growth and mentality. When parents feel that the child is good, they have received good guidance, they understand what parents are advising, but sometimes inversely proportional to what parents expect when the child is outside the house. For this reason, when children are starting to get to know the outside world, do socialization, and play together with their friends, it is better to be accompanied, don't let children socialize too widely, because the environment the child is in greatly influences his behavior.

If there are many cases of sexual violence against children that occur in the city of Ternate, and reports that are submitted to the PPA unit of the Ternate Police, one of the factors that causes this is environmental factors. The association of children who are too free to the point where they are out of control by their parents, an environment where children are too free to make friends with people they even just met, children forget to go home. Even people who become friends with adults to children who don't really understand the wider social world are very young to be influenced by bad people.

One example of a case that occurred in 2021 is that the child who became the victim was a child in grade 2 of junior high school (junior high school), this child often went out at night hanging out with friends who were not only friends from school but also many from outside. By that time it was already late at night, when they dispersed from the hangout place this child was offered by the perpetrator to be taken back to his house,

because this child felt confident in the perpetrator even though it was the first time they met. So this child was taken home but in the middle of the journey the perpetrator stopped and forced this child to go with the perpetrator so that the perpetrator raped this child.

From the case above it can be seen that choosing an environment to associate with is very important. The role of parents in their supervision must pay more attention to who their children associate with, children are still not able to think on a long scale about what children are doing, so children really need guidance and direction from parents or those closest to them.

The social environment is very important to pay attention to, especially for children who often leave the house without their parents knowing how their child gets along, children are very vulnerable to invitations from outside with the lure of something. Children are not yet able to think about what is good and what is bad, what is right and what is wrong. Because the child he knows is only fun, he thinks it's all part of the game.

2. Law Enforcement Factors

The large number of cases of sexual violence against children makes people afraid and feel uncomfortable in their household and social life. This results in a safe and peaceful atmosphere that will not be felt in the surrounding environment. Acts of sexual violence are acts that harm other people because criminal acts of sexual violence are a form of violation of social and legal norms. Thus those who commit crimes of sexual violence are given criminal sanctions (penalties) in accordance with applicable laws as a form of legal policy for the crimes he has committed.

Human behavior that is evil, immoral and anti-social makes people angry and causes irritation among the people and is very detrimental to the public. Therefore, these crimes should not be allowed to continue to develop and grow in people's lives. The community as a whole, together with the official institutions in charge of the police, prosecutors, courts and even correctional institutions, and others are obliged to deal with crime as far as possible. Thus, in order to be able to overcome sexual violence crimes, it is necessary to enforce the law against perpetrators of sexual violence by imposing punishments in accordance with the crimes that have been committed to provide a deterrent effect on perpetrators.

In the case that law enforcement can run smoothly and as well as possible so that crime prevention has a positive impact, then there are factors that influence one of them is the statute factor in imposing criminal sanctions (sentences) on perpetrators of crimes of sexual violence.

The law is a form of regulation in which it regulates the imposition of criminal sanctions (punishments) for anyone who commits a crime, in this case the law in question relates to sexual violence against children. The function of the law itself is that every existing rule can be a means used to become an alternative in overcoming the level of sexual violence against children.

In order for law enforcement to run as stipulated in the law, law enforcement officials are needed who are both the parties that make up and apply the law. Therefore, in addition to law enforcement laws, they should do their job properly in terms of upholding the law in an effort to tackle sexual violence.

Each of these law enforcers has a position and role in society, so that this position and role greatly influences their respective work in terms of law enforcement. Law enforcers are a group of role models in society who should have certain abilities in accordance with the aspirations of the community. As role models, they should be able to choose the right time and environment in introducing new legal norms or rules, as well as setting a good example.

One factor that becomes important in law enforcement is the availability of facilities or facilities. Means or facilities are one of the factors that also affect law enforcement. With adequate facilities, law enforcement can run properly because in the case of law enforcers carrying out their duties, they must be accompanied by supporting facilities. Without the

means or facilities, it is impossible for law enforcement to take place quickly. The meaning of these facilities or facilities includes, among other things, educated and skilled human resources, good organization, adequate equipment, adequate finances.

3. Technology Factor

In every culture there is always knowledge or science and technology, which is used as a reference for interpreting and understanding the environment and its contents, as well as being used as a tool for exploiting, processing and utilizing it to fulfill human needs. Science and technology can develop through various forms of innovation and engineering. The usefulness of science and technology for humans is highly dependent on the underlying values, morals, norms and laws. It must be admitted that in this day and age, humans inevitably have to keep up with the developments of the existing era. If not, they will also be left out of information and may also be ostracized or alienated by circumstances. However, the use of technology does not maximize functionality and does not use it according to needs, so the performance will not be effective. With the increasing sophistication of technology, almost all human roles are replaced by "robots". Technological advances such as cell phones, television, radio, and the internet cannot be avoided in this life, because technological advances go hand in hand with advances in science.

Advances in communication technology on the one hand have positive impacts such as making it easier for humans to interact with one another, making it easier for humans to obtain the information they need. Easily the information obtained by this community can influence the perspective, lifestyle and culture in a particular society. On the other hand, technology also has a negative impact. For example, existing technology and communications are widely used to carry out deviant behavior such as fraud, cheating on national exams, downloading pornographic sites or uploading pornographic images or videos that can lead to the decline of the nation. This negative impact greatly affects life in society.

From the explanation above, the authors conclude that indeed one of the factors that causes sexual violence is the technological factor, the use of technology in a negative direction. The use of social media that is too free, accesses and searches for things that are inappropriate for consumption. Moreover, to be motivated to commit crimes. This has a huge impact on victims of crime, for example children who become victims, children who should go to school to study so they can become the nation's successors, but because of the bad behavior of people, children become victims and also have an impact on the future of children. Therefore, childhood is a time when children are in the process of growing up. Children must be protected from all possible violence against children, especially sexual violence.

According to the author, efforts to protect children must be provided in a complete, comprehensive and comprehensive manner, impartially to a group or group of children. The efforts given are carried out by considering the best interests of the child by remembering their right to live and develop, and respecting their opinion. Efforts to protect children mean the realization of justice in a society.

This assumption is reinforced by the opinion that has been stated correctly that "protecting children is essentially protecting the family, society, nation and state in the future".

4. Monitoring Factor

Supervision is a systematic effort to set performance standards in planning to design information feedback systems, to compare actual performance with predetermined standards, to determine whether a deviation has occurred, and to take corrective action. This expression shows how important child protection efforts are for the future continuity of a community, both the smallest community, namely the family, and the largest community, namely the state. This means that by seeking protection for children in these communities not only upholding children's rights, but also at the same time investing in their lives in the future.

Here, it can be said that there has been a symbiotic mutualism between the two. The function of supervision is to be able to keep abreast of developments. Thus, in handling sexual violence against children, there needs to be synergy between the family, society and the state. In addition, the handling of cases of sexual violence against children should be holistic and integrated. All sides need improvement and treatment, both from the medical side, the individual side, the legal aspect (in this case there are still many weaknesses), as well as social support. If sexual violence against children is not taken seriously, it can have broad social impacts on society. The healing of psychological trauma due to sexual violence must receive great attention from all parties involved.

Various factors cause cases of sexual violence against children and the impact felt by children as victims both physically, psychologically and socially. Trauma to children who experience sexual violence they will experience for the rest of their lives. Physical wounds may be able to heal, but wounds that are stored in the mind don't necessarily disappear easily. It should be a concern because of the children. Apart from having to be protected, it is also because it is in the hands of children that the future of a region or nation will develop.

Sexual violence against children can occur anywhere and anytime and can be committed by anyone, be it family members, school authorities, or other people. Therefore, children need to be equipped with the right knowledge of sexuality so that children can avoid sexual violence. Seeing the impact caused by sexual violence experienced by children who are victims, in handling sexual violence against children, the active role of society, individuals, and government.

There needs to be a system-based approach in handling child sexual violence. An effective child protection system requires interrelated components. These components include social welfare systems for children and families, a justice system that complies with international standards, and mechanisms to encourage appropriate behavior in society. In addition, a supporting legal and policy framework is also needed as well as a data and information system for child protection.

B. Efforts to Provide Legal Protection for Victims of Sexual Intercourse and Rape in the Criminal Justice System.

1. Legal Protection for Children as Victims of Underage Sexual Intercourse

The presence of a child as a creature of God Almighty has basic rights like other human beings, so that no human or other party can take away these rights. In the life of the nation and state, children are the future of the nation and the next generation of the nation's ideals so that every child has the right to survival, growth and development, participation and is entitled to protection from acts of violence and discrimination as well as civil rights and freedoms.(Tjahjanto, 2008). The position of children in society is very vulnerable, considering their physical and mental conditions that are not yet strong and mature. The recent phenomenon of decency crimes places children most often involved in these crimes, as perpetrators or victims.

A proper understanding of children's rights is clearly very important and the main thing to do considering that children have all the hopes of the Indonesian people. Thus, it can be understood that children are a form of investment which is an indicator of the success of a nation in carrying out development. The success of child development will determine the quality of human resources in the future(Widodo, 2016). Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia) reads that:(Sugiyantica, 2014).

"Every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination".

Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 regarding the second amendment to Law Number 23 of 2002 concerning Child Protection to Become Law (hereinafter referred to as the Child Protection

Law) in the provisions of Article 1 point (1) qualify that said child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb (RAHMAN, 2017). The Child Protection Law has provided the widest possible opportunity for a child to grow and develop optimally both physically and mentally so that an ideal generation will be created. Therefore, if there is sexual violence against children, of course this action is a form of child abuse.

If a child becomes a victim of crime, then for legal protection, of course, more attention must be paid because children are the next generation of the nation. Rape experienced by child victims certainly has a traumatic effect or a deep bad memory on the child, this affects the behavior, lifestyle and behavior of the child in the future. Thus, the increasing number of cases of rape against children proves that this problem is not just an ordinary problem. However, it is a serious problem that must be addressed by the government.

Sexual violence in the context of rape is often confused. Whether there is an element of physical violence is often used as a criterion to categorize acts of sexual abuse against children as crimes or not. Sexual harassment against children themselves still tends to be narrowed down, meaning limited to forms of sexual contact by ignoring non-contact sexual harassment forms such as pornography. Whether or not there was an element of coercion is actually not significant in cases of sexual crimes against children because of different understandings about sex between adults and children. child.

Sexual intercourse with minors is considered a crime with a fairly high level of cruelty and is seen as very demeaning to human dignity. Punishment of perpetrators of sexual violence does not eliminate the traumatic feelings suffered by the child. Children are the pillar of the family and the successors of the nation must be protected. However, the fact that cases of sexual violence are rampant makes us all aware that children need to be protected. So many children who experience this tragic thing are victims of their families and in today's society.

The child's condition is more of a form of physical abuse with marks or wounds on the child's body. If violence against children in the household is committed by parents, then it can be called domestic violence. Acts of domestic violence that are included in acts of domestic violence are giving suffering both physically and mentally beyond certain limits to other people who are in the same house; such as spouses, children or parents and the acts of violence are committed at home.

There is no single specific characteristic or personality type that can be identified from a perpetrator of sexual violence against children. In other words, anyone can become a perpetrator of sexual violence against children or sexual violence. The ability of the perpetrator to control the victim, either by deception or threats and violence, makes it difficult to avoid this crime.

Data recorded at the Indonesian Child Protection Commission (hereinafter abbreviated as KPAI) shows that cases of sexual violence entering their institutions continue to increase. Various violations of children's rights in 2021 still occur, both violations related to the fulfilment of rights and related to special protection of children. Based on quite fluctuating public complaint data, in 2019 there were 4,369 cases, in 2020 there were 4,116 cases, and in 2021 there were 5,953 cases, with details of 2971 cases of Fulfilment of Children's Rights, and 2982 Special Protection of Children Number of public complaints related to special child protection cases in 2021 as many as 2,982 cases. The trend of cases in the special protection cluster for children in 2021 is dominated by the 6 highest cases, namely first, child victims of physical and/or psychological violence reaching 1,138 cases; second, child victims of sexual crimes reached 859 cases; third, child victims of pornography and cybercrime totaling 345 cases; fourth, child victims of abuse and neglect reached 175 cases; fifth, 147 cases of children being exploited economically and/or sexually; and sixth, children dealing with the law as perpetrators in 126 cases (Indonesian Child Protection Commission, 2022).

Cases of physical and psychological violence, child victims of abuse reached 574 cases, child victims of psychological violence 515 cases, child victims of murder 35 cases, and child victims of brawls there were 14 cases. Meanwhile, the highest complaints of cases of sexual crimes against children came from the type of child as a victim of sexual abuse in 536 cases (62%), child as a victim of sexual intercourse in 285 cases (33%), child as a victim of same-sex abuse in 29 cases (3%)(Indonesian Child Protection Commission, 2022). From the perspective of the perpetrators, the perpetrators who committed physical and/or psychological violence against victims were generally people who were known to the victims and to a lesser extent unknown to the victims. The perpetrators were quite varied, namely friends of the victims, neighbors, acquaintances of the victims, parents, educators and education staff in the education unit and apparatus.

Based on the description of the data above, it indicates that children are a group that is very vulnerable to crimes of sexual violence because children are always positioned as weak or helpless and have a high dependence on the adults around them. This is what makes children helpless when threatened not to tell what happened. In almost every case that is uncovered, the perpetrator is someone close to the victim.

Child protection provided by the state must be able to guarantee the optimal fulfilment of children's rights for the realization of justice and welfare for children. However, the protection provided does not violate the rights of others and also does not violate religious norms as norms that must be upheld for the purity of their teachings. Child protection aims to guarantee the fulfilment of children's rights so that they can live, grow and develop and participate optimally in accordance with human dignity.

Children who are victims of criminal acts, hereinafter referred to as child victims in Article 1 paragraph (4) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, are children who are not yet 18 (eighteen) years old who experience physical, mental and/or suffering. or economic loss caused by a crime(Ariani, 2014). Child victims and child witnesses in article 89 of Law Number 11 of 2012 concerning the Juvenile Justice System are entitled to all the protections and rights regulated in the provisions of laws and regulations. Article 90 states that in addition to the rights that have been regulated in the provisions of laws and regulations, child victims are entitled to:

- a. Medical rehabilitation and social rehabilitation efforts, both within and outside the institution;
- b. Guarantee of safety, both physical, mental and social; And
- c. Ease of obtaining information about the progress of the case(Ariani, 2014).

2. Children's Rights as Victims

A child who becomes a victim of a crime, especially rape, has various rights and obligations that must be carried out according to the abilities related to his age. These rights and obligations include the following:

a. Rights of Children as Victims

The rights of children who are victims of criminal acts are:

- 1) Receive physical assistance (medical first aid, clothing, shelter, etc.).
- 2) Get help solving problems (reporting, legal advice, and defense).
- 3) Get back his rights.
- 4) Get coaching and rehabilitation.
- 5) Refuse to be a witness, if this will endanger himself.
- 6) Obtain protection from threats by the victim-maker when reporting or becoming a witness.
- 7) Obtain compensation (restitution, compensation) from the perpetrator (according to ability) or other parties concerned for the sake of justice and welfare in question.
- 8) Refuse compensation for the common good.
- 9) Using legal remedies (rechtsmiddelen).

b. Obligations of Children as Victims

The obligations of children as victims are:

- 1) Do not make victims by taking revenge (vigilante).
- 2) Participating with society prevents further victimization.
- 3) Prevent the destruction of the victim maker either by oneself or others.
- 4) Willing to be fostered or self-development not to become a victim again.
- 5) Do not demand compensation that is not in accordance with the ability of the victim.
- 6) Provide opportunities for victims to provide compensation to victims according to their abilities (in installments/remuneration).
- 7) Be a witness if you don't endanger yourself and there is a guarantee of safety for yourself(Arsad & Faisal, 2022).

The rights of the child in Article 1 paragraph (12) are part of Human Rights which must be guaranteed, protected and fulfilled by parents, family, community, State, government and local government.(RAHMAN, 2017). Child protection in Article 1 paragraph (2) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, and receive protection from violence and discrimination. Article 20 states that the State, government, local government, community, family, and parents or guardians are obliged and responsible for the implementation of child protection.(Republic of Indonesia, 2014). Meanwhile, protection in Article 1 paragraph (6) of Presidential Regulation Number 75 of 2020 concerning the Implementation of the Rights of Child Victims and Children of Witnesses is all efforts to fulfill rights and provide assistance to provide a sense of security for child witnesses and child victims carried out by witness and victim protection agencies. or other institutions in accordance with the provisions of the legislation(Ritonga, Din, & Sulaiman, 2021).

Judging from the nature of child protection, it can also be divided into juridical protection, including protection in the field of civil law and in criminal law, which in turn is non-juridical protection, covering protection in the social, health, and education fields (Maulana, 2000). Article 15 of Law Number 35 of 2014 states that every child has the right to receive protection from:

- 1) Abuse in political activities;
- 2) Involvement in armed conflict;
- 3) Involvement in social unrest;
- 4) Involvement in events that contain elements of violence;
- 5) Involvement in war;
- 6) Sexual crimes(Republic of Indonesia, 2014).

Article 1 paragraph (15) special protection is a form of protection that is received by children in certain situations and conditions to get a guarantee of a sense of security against threats that endanger themselves and their lives in their development. Article 59 the government, local government and other state institutions have the obligation and responsibility to provide special protection to children. This special protection is given to children:

- 1) Child in an emergency situation.
- 2) Children in conflict with the law.
- 3) Children from minority and isolated groups.
- 4) Children who are economically and/or sexually exploited.
- 5) Children who are victims of abuse of narcotics, alcohol, psychotropics and other addictive substances.
- 6) Children who are victims of pornography.
- 7) Children with HIV/AIDS.
- 8) Child victims of abduction, sale and/or trafficking.
- 9) Child victims of physical and/or psychological violence.
- 10) Child victims of sexual crimes.
- 11) Children of victims of terrorist networks.

- 12) Children with disabilities.
- 13) Child victims of abuse and neglect.
- 14) Children with deviant social behavior. And
- 15) Children who are victims of stigmatization from labeling are related to the condition of their parents.

Article 69 A of the Child Protection Law states that special protection for child victims of sexual crimes is carried out through:(Prajnaparamita, 2018)

- 1) Education about reproductive health, religious values, and moral values.
- 2) Social rehabilitation.
- 3) Psychosocial assistance from treatment to recovery. And
- 4) Provision of protection and assistance at every level of examination starting from investigation, prosecution, up to examination in court.

According to the researcher's opinion, all the ideals and hopes set out above, as an effort to protect children who are victims of sexual crimes will only be empty dreams if there are no applicable efforts to make them happen. The efforts that need to be made to achieve this progress must improve education because through strong and well-established education the next generation will be able to compete in the increasingly sophisticated era of globalization and always experience changes at any time.(Hasanah, 2022).

If you pay attention to the rights and obligations of the child mentioned above, it is an effort where a person's human rights must still be considered in efforts to protect children, because children, at their age, are very vulnerable to being victims of abuse from adults, they do not understand and understand that their rights have been taken away by people who make children as victims in a crime.

The fulfilment of children's rights can be applied to legal rules that protect children's rights based on Article 18 of Law Number 17 of 2016 concerning Child Protection in conjunction with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that(Yustisia & Pustaka, 2016)v: "every child who is a victim or perpetrator of a crime has the right to obtain legal assistance and other assistance.

Furthermore, legal protection for children as victims of criminal acts of intercourse and subsequent obscenity has been specifically regulated in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, namely Article 81. In addition to Article 81 also regulated in the provisions of Article 82 of Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection which specifically regulates the fulfilment of Child Protection.

This is where the philosophical basis behind the importance of crime victims (their families) gets protection. The importance of victims obtaining recovery as an effort to balance the conditions of victims who experience disturbances, was correctly stated by Muladi when he stated: victims of crime need to be protected because:

First, society is considered as a form of an institutionalized belief system (system of institutionalized trust). This belief is integrated through the norms expressed in the institutional structure. The occurrence of a crime against the victim will mean the destruction of the belief system so that the regulation of criminal law and other laws relating to the victim will function as a means of restoring this belief system. Second, there are social contract and social solidarity arguments because it can be said to monopolize all social reactions to crime and prohibits private actions. Therefore, if there are victims of crime, the state pays attention to the needs of victims by improving services and regulating rights. Third, victim protection which is usually associated with one of the goals of punishment, namely conflict resolution. With the resolution of conflicts caused by criminal acts, it will restore balance and bring a sense of peace in society.

The importance of protecting victims of crime cannot be separated from the consequences experienced by victims after being raped. Victims not only experience physical suffering but also psychological suffering. The issue of protection for victims of rape has always been an interesting issue to scrutinize, because the problem of protecting victims of rape is not only related to providing protection, but also related to the obstacles they face. It is not easy to provide protection to rape victims because there are several factors that become obstacles.

The victim factor plays an important role in overcoming or resolving this rape case, this requires the courage of the victim to report what happened to her to the police, because in general the victim gets physical violence and psychological pressure from the perpetrator of the rape and this makes the victim feel scared and traumatized. The forms of sexual violence due to rape can be categorized into two, namely:

1) Verbal Sexual Violence

Forms of verbal sexual violence are more carried out in the form of invitations or words that are submitted to other people but lead to something related to sexuality, for example:

- a) Joke, tease the opposite sex, or ask questions about sexuality in discussions or chats that are not specifically discussing sexual matters.
- b) Convey or ask other people about sexual desires or sexual desires that have been made by that person, which makes that person uncomfortable.
- c) Forced to have intimate relations as practiced by a husband and wife but outside of a legal or unwanted marriage, without consent and the action is followed by coercion both physically and mentally.

2) Non Verbal Sexual Violence

Forms of non-verbal sexual violence are acts in the form of invitations to use writing or actions that do not directly come into contact between the perpetrator and the victim. Subjects of verbal sexual violence and non-verbal sexual violence can be committed by men and women as well as the objects or victims can be men and women (Hidayati, 2018).

Women experience multiple suffering from rape committed by men. This suffering is not only in the form of coercion during sexual intercourse, but the risk of getting pregnant outside, bearing a fairly heavy mental burden after the rape incident and during her pregnancy, the heavy social pressure she gets from the surrounding environment, and not to mention when the child she is born does not have a father who legal, even though the convicted person of rape can be determined as the father of the baby by the court, but often the perpetrators of rape deny their responsibility (Nyoman United, 2017).

What's more, the most difficult thing is if there is more than one rapist, this makes it more difficult to find the biological father of the baby conceived by the woman who was the victim of the rape. Evidence of the fact that sexual violence can be proven, based on data from the National Commission on Violence Against Women (CATAHU) on March 5, 2022, reports that complaints to Komnas Perempuan have also increased drastically, namely 60% from 1,413 cases in 2019 to 2,389 cases in 2020 until the January- In July 2021, there were 2,500 escalations of violence against women. Where there were 229 cases of rape (Catahu, 5/3/2021).

For perpetrators of rape crimes, they must receive very severe laws so that the perpetrators feel the deterrent effect of what they have done. We can see the criminal sanctions that can be applied to the perpetrator in accordance with his actions, namely, in Article 285 of the Criminal Code which has the following elements:

- a) Whoever, the term element of whoever refers to anyone who can be subject to this element, what is meant by whoever is a man or a man who has intercourse with him.

- b) By violence or threats of violence, what is meant by someone committing violence is that it can make a person powerless or unconscious, so a woman can only be said to be raped when there are scars on the woman's body or the clothes worn by the woman are torn.
- c) Forcing, coercive actions can be done with deeds and can also be done with words or speech.
- d) A woman who is not his wife, in the fourth element of the crime of rape is a woman who is not his wife, so if it is against his own wife then this article will not apply.
- e) Having intercourse, what is meant by this element is that the male genitalia must have entered the woman's vagina in such a way that in the end the sperm has ejected.
- f) By him, what is meant by him is the word by himself the person who commits violence or threats of violence that has forced a woman who is not his wife to have intercourse with him (Sugandhi, 1980).

From the elements of the article, it can be proven in court proceedings. The protection for victims of rape is carried out during the judicial process, as follows: (Wedani & Dananjaya, 2015)

- a) Before the court hearing

The legal protection given to victims of rape was first given by the police when the victim made a report. Victims are placed in the Special Service Room (RPK) where victims of violence or sexual abuse for children and women can report their cases.
- b) During a court hearing

During the trial process, the victim gave testimony accompanied by members of LBH/NGO so that the victim could be more calm and not feel afraid during the trial. Considering that the victim is still psychologically unstable and feels depressed after undergoing examination during the judicial process, assistance is needed by the victim.
- c) After court

After the perpetrator has been sentenced by a judge, then in accordance with Article 5 paragraph (1) letter hs/dm of Law Number 13 of 2006, the victim has the right to receive protection, which includes the following: Knowing that the convict is released; Get a new identity; Get a new residence; Obtain reimbursement of transportation costs as needed; Get legal advice; and/or Obtain temporary living expenses assistance until the final protection deadline.

CONCLUSION

Efforts to provide legal protection for victims of underage sexual intercourse and rape in the criminal justice system are carried out through preventive and repressive approaches, both by the community and the government (through law enforcement officials), such as providing protection/supervision from various threats that could endanger the life of the victim, provision of adequate medical or legal assistance, examination and judicial processes. The background to the need for legal protection for victims of criminal acts is because victims experience physical and psychological suffering whose recovery requires quite a long time to recover so that when facing the examination and trial process they need to get legal protection.

The accommodation of children's rights as victims of underage sexual intercourse and women as victims of rape during the investigation process at the Ternate Police is in accordance with the positive law that applies in the criminal justice system. As for legal protection for children as victims of criminal acts of intercourse and subsequent obscenity, it has been specifically regulated in Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, namely Article 81. Apart from Article 81 it is also regulated in the

provisions of Article 82 of Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection which specifically regulates the fulfilment of Child Protection.

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