



## **LEGAL PROTECTION OF CHILDREN AS VICTIMS OF CRIME ACTIONS AND SEXUAL VIOLENCE**

**Ikama Dewi Setia Triana, Eti Mul Erowati**

*Faculty of Law, Wijayakusuma University Purwokerto*

*E-mail : [ikama.dewi@gmail.com](mailto:ikama.dewi@gmail.com), [etimul26@gmail.com](mailto:etimul26@gmail.com)*

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### **Abstract**

*This article aims to analyze legal protection for children as victims of moral crimes. This research uses a normative juridical research method with a type of approach, namely a statutory approach and a conceptual approach. The legal materials used are primary, secondary and tertiary legal materials, obtained by conducting literature studies. The research results show that the implementation of protection for children who are victims of violence is still not optimal. This is because victims' rights, such as the right to receive rehabilitation, compensation and restitution, make it difficult to manage the release of funds, because there is confusion from law enforcement officials regarding where the funds should be used from. A very fundamental obstacle to implementing the protection of children as witnesses and victims is that there are no funds provided to maximize the implementation of this protection. And in general, protection for child victims of immoral crimes can be carried out in 3 (three) ways, namely: (1) Punishing perpetrators of immoral crimes against children with heavy criminal sanctions so that the objectives of the punishment can be achieved based on the provisions of the Law (2) By provide compensation to child victims of immoral crimes by providing restitution charged to the perpetrator of the immoral crime. (3) By carrying out rehabilitation for child victims of immoral crimes.*

### **Abstrak**

Artikel ini bertujuan untuk menganalisis, perlindungan hukum terhadap anak sebagai korban tindak pidana kesusilaan. Penelitian ini menggunakan metode penelitian yuridis normatif

**Corresponding Author:**

*Ikama Dewi Setia Triana, e-mail : [ikama.dewi@gmail.com](mailto:ikama.dewi@gmail.com)*

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dengan jenis pendekatan yaitu pendekatan perundang-undangan dan pendekatan konseptual. Bahan hukum yang digunakan yaitu bahan hukum primer, sekunder, dan tersier, diperoleh dengan melakukan studi kepustakaan. Hasil penelitian menunjukkan bahwa Pelaksanaan perlindungan anak yang menjadi korban kekerasan selama ini masih belum maksimal. Hal ini disebabkan karena hak korban, seperti hak untuk mendapatkan rehabilitasi, kompensasi dan restitusi sulit mengurus keluarnya dana, karena ada kebingungan dari insyiyusi penegak hukum tentang dari mana sumber dana yang harus digunakan. Hambatan yang sangat fundamental dari pelaksanaan perlindungan anak sebagai saksi dan korban adalah tidak adanya biaya yang disediakan untuk memaksimalkan pelaksanaan perlindungan tersebut. Dan Secara garis besar perlindungan terhadap anak korban tindak pidana asusila dapat dilakukan melalui 3 (tiga) cara yaitu : (1) Menghukum pelaku tindak pidana asusila kepada anak dengan sanksi pidana yang berat sehingga tujuan pemidanaan dapat tercapai berdasarkan ketentuan Undang-undang (2) Dengan memberikan ganti kerugian kepada anak korban tindak pidana asusila dengan cara pemberian restitusi yang dibebankan kepada pelaku tindak pidana asusila tersebut. (3) Dengan melakukan rehabilitasi terhadap anak korban tindak pidana asusila.

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## **INTRODUCTION**

Children are a weak and vulnerable group and therefore need protection so that their rights can be fulfilled. Protection of Indonesian children aims to ensure that children can grow and develop optimally. The challenge in child protection in Indonesia is to realize the fulfillment of children's rights but at the same time be able to provide protection to children from the dangers that lurk them, which in the end can keep children away from the threat of deprivation of children's rights (Wijaya, 2016).

Every child has human rights like the rights that adults have, not only those who are thinking about and willing to take concrete steps to protect children's rights. Children are individuals who are immature both physically and mentally, let alone socially. So, when compared with adults, it is clear that children are more at risk of violence, especially sexual violence (Nasriani, 2012).

Sexual violence against minors will certainly have an impact on the child's psychological and other development. The psychological impact on children will give rise to long-term trauma which can then give rise to unhealthy attitudes, such as inferiority complex, trauma, excessive fear, disturbed mental development, and ultimately result in the child's mental retardation. This situation could possibly become a bad memory for children who are victims of sexual violence.

Sexual violence that befalls Indonesian children not only occurs in areas that are prone to violence but also occurs in areas that should provide protection for children, such as in the family environment, children's educational environments such as schools. Perpetrators of sexual violence against children are not only carried out by people they don't know, but also by people they know, are close to, and trust. This indicates that children are at risk of their safety and are in a very vulnerable position in almost all available social areas.

The high number of cases of sexual violence against children illustrates the government's low level of attention to this problem. Sexual violence against children is a serious violation of Human Rights (HAM) and must be classified as an extraordinary crime because the damage it causes threatens the future of the nation's generations. Sexual violence against children also means that it has damaged the most important and valuable assets of the country, because the future of the country depends on children today (Waluyo, 2012).

Based on the above, children who are victims of sexual violence must receive serious attention from both their families and the government, not only to recover from traumatic conditions, but also so that they do not turn into perpetrators in the future. Nevertheless, it cannot be denied that many children's problems still occur in all places, both in cities and villages, without exception relating to sexual violence against children, there are still many children whose rights are violated, and become victims of various forms of violence, exploitation, abuse, discrimination and so on (Mangku, Yuliantini, Dewi, et al., 2022). Children really need to be protected from various forms of crime that can affect their physical, mental and spiritual development. Therefore, it is necessary to have regulations that can protect children from various forms of crime.

Another problem that arises is the reluctance of victims to consistently fight for their rights in court because of the lack of protection by existing legal instruments. Aspects of sexual violence are always linked to discourses of morality, so that what the victim does will always appear wrong and lacking in caution. In fact, the occurrence of sexual violence will result in difficulties for victims in obtaining justice before the law because of the extraordinary moral intimidation that victims receive. On the other hand, this is exacerbated by the existence of a culture of victim blaming towards victims who are accustomed to placing the victim in the position of being responsible for what happened to him.

The facts regarding the large number of cases of sexual violence that befell children, especially in Buleleng Regency, have indicated that children do not receive attention, protection, and their existence is often neglected. The reality is that age and psychological and mental maturity factors mean that they are often marginalized in the policy process (Syamsir, 2008). This disadvantaged position of children makes them qualify as a vulnerable or vulnerable group.

Therefore, efforts to stop sexual violence are important, because sexual violence causes various injuries to victims, prolonged trauma experienced by victims, feelings of shame, fear, resulting in victims sometimes finding it difficult to express the violence they have experienced again. Thus, there is a need for legislation and government attention that is able to accommodate the rights of victims which will be a breakthrough in efforts to eliminate all forms of sexual violence, especially considering the condition that there are still many forms of crime and sexual violence (Gultom, 2013). This is truly ironic in the understanding, awareness and faith that children are the shoots of potential and the young generation who are the successors of the ideals of the nation's struggle, have a strategic role, special characteristics and characteristics and therefore must be protected from all forms of inhumane treatment that result in human rights violations.

## **RESEARCH METHODS**

The research method used in this research is a type of normative legal research or known as doctrinal legal research, which is a process for discovering legal rules, as well as for answering legal problems or issues being researched by reviewing library materials (Marzuki, 2014). This research uses a statutory approach and a conceptual approach. Legislative approach (*statute approach*) to examine or study regulations relating to legal protection of children as victims of moral crimes. The conceptual approach provides views and doctrines of legal science as a basis for analyzing problem solving. The legal material collection technique used consists of primary legal material, secondary legal material, and tertiary legal material obtained by conducting literature studies consisting of legal material instruments that have a direct connection to the legal protection of children as victims of moral crimes.

## **RESULTS AND DISCUSSION**

### **Regulation of Legal Protection for Children as Victims of Moral Crimes.**

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. Conceptually, efforts to provide protection for human rights, especially children's rights, need to pay attention to at least 4 (four) principles of child protection, including: (Supeno, 2010)

1. Children cannot fight alone. Children cannot protect their rights themselves, many parties influence their lives. The state and society have an interest in ensuring child protection.
2. The child's best interests. Children must be seen as having high priority in every decision concerning children. This principle is used because in many cases the rights of children are victims, due to the child's ignorance, because of their developmental age.
3. Child protection refers to the understanding that child protection must start early and continue.

4. Intersectoral. The fate of children depends on various factors, for example poverty. City planning and all evictions, the education system and so on cannot be handled by the sector, let alone the family or the children themselves. Thus, child protection is a struggle that requires the contribution of everyone at all levels.

Furthermore, the implementation of child protection is all activities to guarantee and protect children and their rights to (Mangku, Yuliantini, Ruslan, et al., 2022):

- a) Survival, namely a decent standard of living, nutritious food, clothing, shelter, health services, a decent living, protection from all forms of violence;
- b) Growth and development, namely enabling children to grow and develop optimally according to their potential, through education, playing and utilizing free time, socio-cultural activities, and access to information;
- c) Obtain protection, including protection from violence, exploitation and discrimination, including trafficking; and participation, namely so that children have their opinions heard and can play an active role in their community, in accordance with their potential, especially in various matters involving the interests of children

Legal protection for children who are victims of morality crimes can include abstract (indirect) and concrete (direct) forms of protection. Abstract protection is basically a form of protection that can only be enjoyed or felt emotionally (psychically), such as a sense of satisfaction (satisfaction). Meanwhile, concrete protection is basically a form of protection that can be enjoyed in real terms, such as gifts in the form of material or non-material. Material gifts can take the form of compensation or restitution, exemption from living expenses or education. Providing non-material protection can take the form of freedom from threats, from news that demeans human dignity (Wahyuningsih, 2016)

Legal protection for child victims of sexual crimes in abstract form is regulated, among other things, in the Criminal Code (Yuliantini et al., 2021). The formulation of morality crimes in the Criminal Code which can be used as a basis for ensnaring perpetrators of either acts of sexual intercourse or sexual immorality is regulated in Chapter The perpetrator is threatened with imprisonment between 9 months and 7 years and a fine of between Rp. 15,000.00 (fifteen thousand rupiah).

Apart from that, protecting children is also the government's commitment, namely with the issuance of Perpu No. 1 of 2016 concerning the second amendment to Law no. 2 of 2002 concerning Child Protection. The Perpu regulates, among other things, aggravated penalties, additional penalties and other measures for perpetrators. The criminal aggravation is in the form of an additional penalty of one third of the threat of imprisonment for a minimum of 10 years and a maximum of 20 years. Apart from that, the threat of life imprisonment and the death penalty are also included in the criminal aggravation. Meanwhile, additional alternative crimes that are regulated are the announcement of the identity of the perpetrator, chemical castration, and the installation of electronic detection devices.

Based on the provisions above, apart from imprisonment, there are also fines for perpetrators of sexual crimes against children. The fines listed in the Child

Protection Law are actually quite ironic, because fines do not accommodate the interests of children as victims but only accommodate the interests of the state, namely as income to the state treasury which does not provide any benefits for children as victims of sexual crimes.

## **Analysis of Legal Protection for Children as Victims of Moral Crimes**

Victims of crime are people who, individually or collectively, suffer losses as a result of actions or actions that apply in a country, including regulations that violate abuse of power. The protection of children as victims of sexual crimes, especially in the form of providing compensation, either through the provision of compensation and/or restitution, should receive attention from policy makers (Yuliartini et al., 2021). Regarding compensation and restitution, Stephen Schafer, in his book "The Victim and His Criminal", suggests 5 (five) systems for providing compensation and restitution to crime victims, namely:

- 1) Civil compensation is given through a civil legal process, separate from the criminal legal process.
- 2) Compensation of a civil nature is given through criminal proceedings.
- 3) Restitution which is civil in nature and mixed with criminal nature, is given through the criminal process.
- 4) Civil compensation is provided through criminal proceedings and is supported by state income sources.
- 5) Neutral compensation is provided through special procedures

Based on this, actually fines do not need to be included in the Child Protection Law. What should be included in the Child Protection Law is something that can accommodate the interests of children as victims of sexual crimes, namely the implementation of restitution. In subsequent developments, another form emerged, namely that the community must be given the opportunity to demand accountability from the creator who has disturbed the peace of society and to avoid the possibility of abuse for the victim, legal recourse is needed through compensation from the creator for the victim and the community to cover the consequences of the disturbance. social in society (Wahid, 2012). Government Regulation no. 44 of 2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims in Articles 20 to Article 33 regulates the provision of compensation (restitution) from perpetrators of criminal acts to victims of criminal acts.

Apart from restitution, victims of criminal acts, in this case children who are also witnesses to the criminal acts they have experienced, also receive rehabilitation assistance as regulated in Article 6 of Law Number 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Witness and Victim Protection, namely:

1. Victims of serious human rights violations, victims of criminal acts of terrorism, victims of criminal acts of human trafficking, victims of criminal acts of torture, victims of criminal acts of sexual violence, and victims of serious abuse, apart from having the rights as intended in Article 5, are also entitled to:
  - a) medical assistance.

- b) psychosocial and psychological rehabilitation assistance.
- 2. Assistance as intended in paragraph (1) is provided based on the LPSK Decree.

Victims of criminal acts, who are basically the parties who suffer the most in a criminal act, do not receive as much protection as is provided by law to perpetrators of crimes as stated by Andi Hamzah. In discussing criminal procedural law, especially in relation to human rights, there is a tendency to discuss matters relating to the rights of suspects without paying attention to the rights of victims (Hamza, 1986)

Regarding efforts to protect victims of immoral crimes, it is not solely the duty of law enforcement officials, but also the obligation of society to help restore the condition of rape victims in social life (Wahid & Irfan, 2001). Efforts to protect children as victims can be carried out in the following forms:

- 1. Protection By Law.  
The state's efforts to provide protection with statutory regulations have not been optimal. Even though there is a Witness and Victim Protection Law, what is in it has not been implemented by law enforcement officials.
- 2. Protection during the criminal justice process.
  - a. The court asks for information from the child in a family atmosphere. Children who are victim witnesses will be able to provide their statements if the judge when asking questions uses language that is understandable and in a relaxed and informal atmosphere so that the child will feel comfortable and can provide information about the events they experienced freely without feeling pressured in a trial situation.
  - b. Witnesses are given freedom to give their statements.  
In criminal cases, witness statements are very important to shed light on the events that occurred. The victim witness was not sworn in so that when giving his statement he could speak freely before the court about the events he experienced. This is as regulated in Article 171 of the Criminal Procedure Code.
  - c. The trial was held behind closed doors.  
All cases of immoral crimes involving children as victims which are tried at the Magetan District Court are carried out behind closed doors. This means that the only people permitted to take part in the proceedings are the Judge, Prosecutor, Registrar, Defendant and Witnesses. The trial is only open to the public when the judge's decision is read.
  - d. Victim witnesses can have their statements heard without the presence of the defendant. If the victim witness objects to the defendant being present in the courtroom, the judge can order the defendant to leave the courtroom. This is intended to avoid anything that affects the child's soul. This is because not all children have a strong mental attitude when they have to recount the events they experienced in front of other people, especially people who have committed immoral acts against them.

3. Protection from society

The community, which includes the victim's family, are the closest people who can help restore the condition of the rape victim. By not pouting, not bringing up what happened and not isolating the rape victim, you will be able to help the victim's self-confidence grow again and little by little she will be able to forget the bad incident she experienced. 17 Efforts to provide legal protection for children as victims of immoral crimes involve the government through various laws and regulations, law enforcement officials and the community.

## **CLOSING**

### **Conclusion**

From the discussion above, conclusions can be drawn regarding the supervision of internet-based broadcast media, which are described as follows:

1. The implementation of protection for children who are victims of violence is still not optimal. This is because victims' rights, such as the right to receive rehabilitation, compensation and restitution, make it difficult to manage the release of funds, because there is confusion from law enforcement officials regarding where the funds should be used from. A very fundamental obstacle to implementing the protection of children as witnesses and victims is that there are no funds provided to maximize the implementation of this protection.
2. In general, protection for child victims of immoral crimes can be carried out in 3 (three) ways, namely: a. Punish perpetrators of immoral crimes against children with heavy criminal sanctions so that the objectives of the punishment can be achieved based on the provisions of the law. b. By providing compensation to children who are victims of immoral crimes by providing restitution which is charged to the perpetrator of the immoral crime. c. By carrying out rehabilitation for child victims of immoral crimes

### **Recommendation**

The following are several suggestions that can be given regarding the research above, including:

1. When carrying out legal examinations, victims must be in a safe and comfortable situation by avoiding attitudes and behavior that cause distress to the victim.
2. Compensation given to victims is not only to compensate for the losses experienced but also to fulfill a sense of justice in society.

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